270 Purpose of Part IV *(Path B)*

Ecology did not create these rules in cooperation with federal agencies overseeing salmon restoration. There is no certainty that sacrifices required by Ecology will be sufficient to satisfy those federal agencies.

Path B was created by Ecology in meetings with NMFS, USF&WS, and tribal representatives. The comment is correct in noting that there is currently no certainty federal agencies will grant an exception to the take provisions of the ESA for master programs written according to these guidelines. However, NMFS and USF&WS have indicated they will very likely grant an exception after the final rule is adopted.

270

I am concerned that NMFS has not approved Path B for inclusion in the next ESA 4(d) rule amendment.

NMFS has voiced strong support for Path B at this time, however the 4(d) amendment process is a public rule making process that requires formal proposal and adoption procedures. NMFS must go through these procedures before it can "approve" Path B for an exception in the 4(d) rule.

270(1)(b)

Ecology quotes from RCW 90.58.020 to the effect that "permitted uses in the shorelines of the state to minimize, insofar as practical, any interference with the public's use of the water." The SMA was established, in part, to create a system of permits that would balance the public's right to the use of the water with other uses. It is clear, however, that the public's right to the use of the water has been vastly curtailed given the proliferation of docks and piers over the last 30 years. As part of its analysis under SEPA, Ecology must explain how the SMA has protected both the public's right to the use of the water and the shoreline environment by the large number of docks and piers that have been allowed under the SMA.

The concern of this rule is not to address past actions, but future ones. Ecology believes the policies of the rule strike a proper balance for protection of both public and private rights.

290(1)(a) Master Program Concepts

The third paragraph states that master programs balance and integrate the objectives and interests of "local citizens' insofar as they are consistent with the Shoreline Management Act. This sentence assumes that the objectives and interests of "local citizens" are somehow contrary to the goals and policies of the SMA. This is incorrect. Please amend this sentence as follows, "First, they PROVIDE A PROCESS FOR EVALUATING ALTERATIONS TO THE NATURAL CONDITION OF THE SHORELINES IN LIMITED INSTANCES FOR USES WHICH ARE PARTICULARLY DEPENDENT ON THEIR LOCATION ON OR USE OF THE SHORELINES OF THE STATE."

Ecology revised the rule to address this concern as follows: "Master programs serve a planning function in several ways. First, they balance and integrate the objectives and interests of local citizens ~~insofar as they are consistent with the Shoreline Management Act~~. Therefore, the preparation and amending of master programs shall involve active public participation, as called for in WAC 173-26-300(3)."

290(1)(b)

We wish to emphasis that under RCW 90.58.100(2)(a) the economic development element is limited to developments "that are particularly dependent on their location on or use of shorelines of the state." This is an extremely narrow allowance of activities, not the expansive list of "water-convenient" uses permitted under these guidelines. We request that Ecology delete its "water-related" category, which has no basis in the SMA. Under RCW 90.58.100(2)(h) an element is required giving the consideration of the state-wide interest and "minimization of flood damages." There is no limitation to only 100-year flood events, or limitations on channel migration zones. We again request that Ecology require that master programs work to limit development and further damage from all flood events.

The provisions of 90.58.020 recognize that uses beyond those that are strictly water dependent are appropriate shoreline uses as long as those uses that are water dependent are provided for and the other uses are consistent with control of pollution and prevention of damage to the natural environment. The jurisdiction of the SMA does not extend beyond the 100 year floodplain, the other regulatory systems governing flood hazard management relate to the 100 year floodplain and thereby it is most appropriate that the provisions of the guidelines be consistent with those other systems.

290(1)(c)

We specifically request that Ecology highlight and emphasize the importance and vulnerability of island ecosystems. Unfortunately, for the past 30 years, Ecology has treated islands no different than mainland shoreland areas. However, islands remain unique in that the impacts of development are magnified and restoration opportunities limited. We request that Ecology specifically recognize Washington's islands as a special category of Shorelines of State-Wide Significance.

Shorelines of statewide significance are established in the SMA in 90.58.030(e) and cannot be changed by rule. The commentor expresses concern about protection for shorelines. Note that the opening sentence of the SMA declares that "shorelines of the state are among the most valuable and fragile of its natural resources." Ecology believes the new requirements to protect ecological functions will provide greater protection for *all* shorelines than the requirements found in the 1972 guidelines (Chapter 173-16 WAC). This will include greater protection for islands where scientific analysis shows that is appropriate.

290(1)(d)

As drafted in Part IV, this WAC will allow "different sets of environment protection measures" for each shoreline segment which will likely lead to more fish and shellfish habitat degradation. While the shoreline designation process may be convenient for shoreline and land use planners to parcel up the landscape, this approach does nothing to protect against adverse impacts and is inconsistent with RCW 90.58.020. Furthermore, there is no requirement to use the best available science in designating these areas.

Protection of shoreline resources, including protecting fish and shellfish habitat from degradation, is one of the chief purposes of these guidelines. The environment designation system has proven to be a reasonable means of assigning appropriate shoreline

protection measures to specific shoreline segments.

290(2)(a) Basic requirements

We object to the diagram as shown in Fig. 1 which appears to show that the GMA takes priority over the SMA. This figure should be amended to include the reference to RCW 36.70A.481 which states that GMA should not be inconsistent with the provisions of the SMA and RCW 90.58.340 which makes it clear that adjacent land uses must also be consistent with the policies of the SMA.

The diagram does not compare the priority of the SMA vs. the GMA as the comment asserts.

290(2)(b)

This subsection would allow local governments to adopt other documents by reference. As drafted, the subsection is missing any real guidance as to how these existing documents should be analyzed and potential modified to be consistent with the Shoreline Management Act and Guidelines Rule. At a minimum, there should be an analysis of the documents to be adopted by reference to see if these documents would create and sustain habitat-forming processes and properly functioning conditions for fish, shellfish, and wildlife.

This section of the rule states that "In the approval process, the department will review the referenced development regulation sections as part of the master program." The purpose of this review is to consider consistency of the submittal with the goals and policies of the SMA and the guidelines.

290(2)(c)

First bullet in list should include exemptions.

Ecology has revised the rule as requested. The sentence now reads: "Clear directions to applicants applying for shoreline permits and exemptions…"

290(2)(e)(ii)(C)

Under (2)(e)(ii)(C) Please amend the last half of this section as follows: "Include general regulations that . . .protect shoreline ecological functions from the effects of human-made modifications to the shorelines and which protect shoreline ecological functions from non-water dependent uses that can be located outside of shoreline areas."

The proposed change to (2)(e)(ii)(c) would make this general direction more specific and reduce its applicability to only non-water dependent uses, which would be inconsistent with the policy of the SMA.

290(2)(e)(iii) Administrative provisions

Add new section; "Local governments, in conjunction with state agencies, must provide enforcement mechanisms needed to assure that development within shoreline jurisdiction will comply with the act, this chapter, and PFC requirements for PTE species. This should be a new section, (E) Enforcement. It should contain detailed guidelines for local governments, suggesting methods of enforcement, level of staffing, etc.

The provisions of the SMA leave local government broad latitude to design enforcement systems that suit their system. The provisions of WAC 173-27 address local and state enforcement activities.

290(2)(e)(iii)

In this section and -290(2)(e)(iii), Ecology attempts to regulate all activities, such as clearing vegetation or construction of a bulkhead regardless of whether those activities require a substantial development permit, through conditional use and variance regulations. The regulation goes on to state that all jurisdictions are required to insert language in their SMPs which specifically state that "all new uses and development shall conform to chapter 90.58 RCW: WAC 173-26 and this master program." The District is concerned that its many scientific studies for water quality, fish and terrestrial habitat and inventories conducted in the Columbia River will constitute a "use" within the meaning of the rule. The effect of such a rule will be the regulation of activities previously exempt from a substantial development permit under RCW 90.58.030(3)(e). This provision circumvents the legislative directive to regulate substantial developments and to exempt from regulatory review numerous exempt activities from the definition of "substantial development." While RCW 90.58.100 and RCW 90.58.340 require local governments to achieve a use policy consistent with the SMA, the regulation of development activities, and the impacts of those activities must first fall within the definition of "substantial development" to be subject to the regulatory requirements of he Act. The fact that uses are separately regulated under the Act does not entitle the Department of Ecology to attempt to sweep away the statutory exemptions by rendering them meaningless. The purported extension of statutory authority and elimination of statutory exemptions will jeopardize the enforceability of locally adopted SMPs.

This rule removes the exemption for SFR's and apartments.

A review of case law and the statute makes it clear that the provisions commented on are consistent with the law as it exists today. See response to section 020 (26) regarding exemptions. The guidelines do not and cannot create new permit requirements or alter existing permit requirements established in law. Regarding the comment about exemptions for apartments, multifamily dwellings have never been listed as exempt from the substantial development permit requirement.

290(2)(e)(iii)(B)

RCW 90.58.100(5) makes clear that "conditional uses and variances" ". . .shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect." In our view, conditional uses and variance are granted by local government and approved by Ecology that do not meet this test. As part of the SEPA review for these regulations, we specifically request that Ecology evaluate the conditional uses and variances granted in the past by local governments and determine the cumulative environmental impact from these conditional uses and variances."

This request is not relevant to the scope of these regulations.

290(2)(e)(iii)(C)

Ecology must clarify just how administrative permit review and enforcement procedures are carried out. This section should summarize, how the public is notified of substantial permit applications and/or letters of exemption and what role, if any, the public has in promoting the enforcement of permit conditions and/or activities taking place without permits.

The minimum standards for processing a Substantial Development Permit are established in RCW 90.58 and WAC 173-27. Local government may adopt different administrative provisions so long as they comply with the minimum requirements.

290(2)(e)(iii)(D)

Missing key sentence: "This process shall involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties." These words were included in Path A but were missing from Path B.

Local governments, state agencies, and tribes should work jointly to provide enforcement and assure compliance with the act.

Ecology has amended the rule as requested. The rule now reads: "Master programs shall include a mechanism for documenting project review actions and evaluating their cumulative effects on shoreline conditions. See WAC 173-26-300(2)(b) and (3)(h). This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties. ~~Local governments, in conjunction with state agencies, must provide enforcement mechanisms needed to assure that development within shoreline jurisdiction will comply with the act, this chapter, and PFC requirements for PTE species."~~

290(2)(e)(iii)(D)

The section states that local government must provide enforcement mechanisms to assure that development will comply with the act, and PFC requirements for PTE species. This is a huge undertaking. Enforcement provisions are already in place with respect to the act. ESA enforcement will require additional staff and resources as well as added liability. DOE and/or the Services will need to provide significant financial assistance to the County as well as personnel support and shared legal responsibilities when decisions and actions are appealed.

Under existing law, when the local government is acting as the agent of the state in administering the SMA, the state is responsible in some measure for costs associated with legal challenges. Ecology agrees that implementing either Part III or Part IV of this rule will be expensive. Ecology is working with local governments to identify costs associated with implementing the rule and will attempt to secure funding from the Legislature.

290(2)(e)(iii)(D)

Ecology must clarify that documentation of project review actions and changing conditions in shoreline areas must be based on an evaluation of historical natural conditions, as well as a baseline of changes since 1971, not, as seems to be implied a cumulative effects analysis based on today's substantially degraded shoreline conditions.

Ecology respectfully declines the suggestion. Documenting the changes from permit conditions authorized after the adoption of a new SMP makes the most sense, from a practical standpoint as well as a cost-effectiveness standpoint, to consider only impacts to current conditions. The inventory required for both path A and path B is the appropriate place to assess changes and degraded conditions.

290(2)(e)(iii)(D)

The inability of a local government to conform to this provision of master program contents is not addressed. Is the intent to hold or waive all shoreline permit applications until the local government has implemented a mechanism to evaluate cumulative effects of individual projects?

This provision would have local government create an obligation for itself to conform with. Ecology does not have the authority to "hold or waive" permits submitted to it by local government except as established in WAC 173-27, and the SMA (90.58 RCW).

290(2)(e)(iii)(D)

PFC (although not referenced in this draft) was developed to describe stream conditions, and not for species requirements. Will WDFW be asked to describe PFC for species? (See WAC 173-26-300)(c)(h)] With the definition provided, this would be different from PHS management recommendations. Was this meant to say "PHS requirements"?

PFC is defined in 173-020(36). The reference to it in this provision is intended to reinforce its importance within the framework of Path B.

290(2)(e)(iii)(D)

Master programs must document the response to pubic participation and comments as part of the project review actions.

The purpose of this section is to assure that the final action taken on permits is recorded and evaluated together with other project actions over time. Requirements for documenting public participation are contained in WAC 173-27.

300(1) Comprehensive process to amend SMPs - Applicability

Uses an example to illustrate what is a "minor revision" to a master program. Changing the boundary of an environment designation could constitute a major change in the protective status of a segment of shoreline and may not be appropriate where PTE species or their critical habitats occur.

Though comprehensive updates of local shoreline programs would not be required, the guidelines should provide for an analysis of existing programs by local agencies (with review by Ecology) to determine the degree of conformance or nonconformance with the new guidelines. Where significant problems are identified, updating of those sections should be required. It would not be desirable to have jurisdictions avoiding updates of their programs because they perceive lack of conformance to be less burdensome than updating. In terms of environment designations, it should be clarified that local jurisdictions should thoroughly evaluate all shorelines regardless of current designation or designation boundaries, and not shortcut the process by simply substituting a new designation for an old one. Ecology must make clear that local governments are not to submit master program amendments that serve the same function as spot-zoning. The entire purpose of master programs are undermined when local governments amend their master programs to accommodate non-conforming development, particularly for a single user. This type of master program amendment should be prohibited.

Section 300(1) is intended to be applicable to major revisions of the SMP. Ecology must review all SMP amendment proposals in accordance with the provisions of Chapter 173-26 (Part II). Whether or not a proposal to amend the master program map regarding a single parcel is appropriate or not must be evaluated through that process.

300(2)(a) Use of scientific and technical information

Some of the language is vague and needs to be defined. For example, "measurable performance criteria" should be clearly defined. The recent King County Mitigation Study, which found a 97% failure rate in wetland and stream mitigation projects, is ample evidence of the pressing need for clear guidelines, rather than general concepts, in our regulations.

Specific numerical standards are not used in the guidelines because conditions vary and new science is evolving.

300(2)(a)

Ecology should make clear that "consult with" means to respond in writing to substantive comments provided by any of the agencies listed above.

The dictionary definition of "consult" is adequate for this purpose. Written responses may not always be appropriate.

300(2)(a)

Should include Tribal governments in the consultation process.

✠ The rule includes the provision that "Local governments should also contact relevant state agencies, universities, and affected Indian tribes for available information."

300(2)(a)

Missing key words: "Local governments are encouraged to work interactively with neighboring Jurisdictions, state resource agencies and affected Indian tribes to address technical issues beyond their scope of existing information resources or locally initiated research." These words were included in Path A but were missing, from Path B.

✠ Ecology has revised the language as requested. The rule now reads: "Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, and affected Indian tribes to address technical issues beyond the scope of existing information resources or locally initiated research."

300(2)(a)

Missing key words: "The context, scope, magnitude, significance, and potential limitations of the scientific information shall be considered. At a minimum, make use of and, where applicable, incorporate all available and relevant scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science." These words were included in Path A but were missing from Path B.

✠ Ecology has revised the language as requested. The rule now reads: "At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science."

300(2)(a)

Ecology should not have abandoned the definition of best available science found in the April 1999 version of the rule. Decisions should be made on the basis of scientific information that has been peer reviewed and the results of which can be replicated in other studies. The language presented here does not guarantee that this will be the case.

The term "best available science" should be used throughout the rule, as this has more legal weight.

✠ To distinguish between requirements of the GMA and SMA more clearly, Ecology has removed the reference to "best available science" in Section 300(2)(a) and referenced "best available science" only in the section on critical areas [Section 300(2)].

300(2)(b)

Monitoring should focus on units of measurement that allow evaluation of the effectiveness of regulatory programs in actually producing fish. While the tools may not currently be available to track the effectiveness of site specific actions, monitoring can provide valuable information on the effectiveness of SMPs if the monitoring program relies on appropriate units of measurement and aggregates data on landscape or watershed scales. This would ensure that SMP programs will be credited or discredited for the actual impacts on listed species of activities within their range of authority and will not be penalized for environmental conditions that are beyond their control. This also supports a policy that encourages fish production goals by life stage.

SMA monitoring should be explicitly linked to other monitoring efforts so that monitoring results can be aggregated on a watershed or landscape scale. Monitoring and adaptive management should be explicitly tied to ESA concerns such as levels of incidental take and recovery standards.

SMPs should include biological monitoring, such as the use of the Benthic Index of Biological Integrity (B-IBI) as proposed by Jim Karr (Karr 1998 in River Ecology and Management, Naiman and Bilby eds.) as the foundation of SMPs and adaptive management. SMPs must include B-IBI targets, and include provisions to reach or protect the conditions that foster such biological health. SMPs must recognize, prevent, and restore the interconnected nature of the broader landscape and riparian ecosystems. Stormwater runoff, loss of vegetative cover, impervious surfaces, rivers disconnected from wetlands and side channels, and other factors all diminish riparian health and ecosystem function. Quality Indices for Urbanization Effects in Puget Sound Lowlands, Ecology Pub. 98-04 outlines these factors and describes conditions for riparian corridors applicable to Puget Sound and probably coastal areas, which have similar rainfall and geomorphology. The indices are not intended for use on the east side of the Cascades.

Habitat productivity should be a key indicator and should be expressed in terms of the intrinsic productivity of the fish populations. Habitat goals should be established through the recovery planning process. In some systems empirical data exists with which to quantify current levels of fish productivity, capacity and diversity and to quantify the levels that might be achievable under properly functioning conditions. For other systems, ecosystem or life cycle models might be utilized to generate reasonable estimates of productivity, abundance and diversity achievable under properly functioning conditions. These fish production goals then could be used to grade the success or failure of SMP programs over time.

In order to evaluate productivity in different habitat types and by separate life stages, the production goals can be expressed as survival rates by individual life stages. In systems where there are data on abundance at different life stages (e.g. fry, freshwater smolt, estuarine smolt, adult recruit) productivity goals would be expressed as the abundance at one stage divided by the abundance at a previous stage.

Under 300(2)(b)(i)(C), the draft Guidelines lack any guidance as to what should be used as "measurable performance criteria". At a minimum, this criteria should use the most protective recommendations from the scientific literature cited in the DEIS.

In 300(2)(b)(i)(C), language requiring the establishment of "measurable performance criteria, thresholds, or benchmarks," is extremely vague. The entire success or failure of an adaptive management program rests on whether this step is properly conducted. There are several problems. To begin with, the concept of "benchmarks," which measure interim progress, is very different from that of "performance standard "or desired outcome. Ideally, the rule would require both. Whatever the case, the rule should clearly define what is required. Also, the rule should also identify what specifically is being measured (e.g.- vegetation, geomorphology, etc.) rather than simply refer to maintaining and restoring "PFC." Ideally, these characteristics or qualities would be identified in a list which is referred to in this subsection.

The definition of "ecological functions" provides some guidance, but is still too general to be of much assistance (particularly in the way it refers to "habitat") and, as the rule makes clear, PFC is a subset of ecological functions. Planners are not biologists and should not be expected to identify these desired qualities independently. Deferring these decisions to the plan adoption phase will lead to much confusion and conflict at that stage. It will also be a drain on the Department's resources, as local governments continually ask for guidance on this matter.

Some monitoring should focus on listed fish populations that survive to the point where they enter Puget Sound. Since it now appears that listed Chinook may spend a significant portion of their marine life stage in the sound, monitoring of this life stage is important. One approach that should be considered links estuarine fish production to biological and physical environment indicators. (Demers, et al 2000)

Monitoring of biological conditions and species populations must be an inter-agency effort.

SMPs are administered by local governments. The activities called for in this section relate substantially to activities over which local governments have some control. Ecology believes it is unrealistic to establish as a minimum statewide requirement that individual local governments evaluate SMP provisions to assess species productivity.

State and federal governments are developing programs for monitoring fish habitat and productivity. This information will be factored into future version of the state guidelines and local SMPs.

Evaluation of levels of incidental take and recovery standards is not the responsibility of local government.

300(2)(b)

The inventory of shoreline conditions should be linked with the management objectives to be established as part of the monitoring and adaptive management provisions found in section WAC 173-26-300(2)(b).

See section 300(3)(d) which details how inventory information should be used for establishing baseline conditions for monitoring.

300(2)(b)

This section should be reviewed against Path A – 200(2), pages 25 and 27. These pages have additional requirements that should be added here in addition to monitoring and adaptive management requirements as outlined on pages 91-92.

Ecology has reviewed all the language in Path A and Path B for consistency and revised language in both for consistency, where appropriate. These changes are shown in the "strikethrough" version of the rule published as part of this document.

300(2)(b)

Ecology is subjecting local jurisdictions to continual monitoring of shoreline functions, in-water functions, and regulatory updating that may impact adjoining counties adopting Path A. Implementation of Adaptive Management will require perpetual updating of local shoreline plans and continual review and approval of local jurisdiction's plans by DOE. If DOE determines that new and improved monitoring and regulatory methods are available, it appears that local jurisdictions will be obligated to implement such criteria under the proposed definition. The coordination and integration sought by DOE among adjoining counties could well involve the same perpetual review of SMP adopted by Path A counties.

The definition of Adaptive Management is too broad and obligates local jurisdictions to expend limited resources on perpetual monitoring of the physical and regulatory environments. On a river system like the Columbia River, there could be far reaching implications even affecting counties which have elected to forego the rigid requirements of Path B. Moreover, the District is currently involved in aspects of adaptive management through agreements with the NMFS and is concerned that local jurisdictions may impose requirements that are in addition to or in conflict with NMFS' requirements.

The guidelines do not require local governments to continually monitor biological conditions. The intent of the monitoring and adaptive management section is to assure that local governments track effects of their actions, and that over time, SMPs are evaluated to ensure they are accomplishing the policy objectives of the SMA and these guidelines.

300(2)(b)

The guidelines establish a standard of "adaptive management" that would erode any regulatory certainty. The standard could be always changing at the determination of the regulator—a moving target that could never be hit.

Once an applicant submits a permit it will be evaluated according to provisions of the current adopted SMP.

300(2)(b)

There is no indication how projects would be monitored and how this would be paid for, by the property owner or the local agency?

How projects would be monitored is addressed in subsections (i) and (ii). The costs of monitoring will be borne largely by state and local government, although some cost may be incurred by property owners as future shoreline development or re-development occurs.

300(2)(b)

These mandates, as well as the tasks listed in subpart "…(c) (ii), will come at a great expense to local governments. It is foreseeable that, in order to accomplish these tasks, the financial burden for these management practices could be placed on the applicant. As part of subpart (i), the local governments are to "…(E) Identify a long term funding source and commitment…". Such source could very well come from industry and user taxes.

King County strongly supports the monitoring and adaptive management aspects of the SMP guidelines. Establishment of management objectives and concomitant performance standards are critical elements for species recovery and for determining approaches for attaining and maintaining PFC. This section of the SMP guidelines is critical for achievement of the certainty requirement under ESA. Management objectives can be directly related to the recovery plans developed at the various regional and local levels. Establishment of the management objectives should also include a definition of the critical populations and associated habitats. Ecology will need to ensure that local governments are able to make the financial and technical commitments to achieve the provisions of this section.

DOE must secure funding to provide inventory and monitoring technical assistance to local governments.

Ecology agrees that implementing the guidelines will require new Legislative appropriations. Ecology will continue to support state funding. It is possible that some local governments will recover some costs from fees.

300(2)(b)

Define: "Actions with a high degree of effectiveness or low risk to PFC should be low priority for monitoring and adaptive management." This is too vague or unclear: The statement does not define what actions are ` considered to have a "high degree of effectiveness" or what is considered a "low risk to PFC." Local governments may interpret this differently resulting in potentially higher, unacceptable risks to PFC.

In the first paragraph, the last sentence reads "Actions with a high degree of effectiveness or low risk to PFC, should be low priority for monitoring and adaptive management." The converse statement should also be included: "Actions with a low degree of effectiveness or high risk to PFC, should be high priority for monitoring and adaptive management."

The sentences in question read: "Priorities for monitoring specific performance criteria should be tied to the degree of uncertainty for effectiveness of measures. Actions with a high degree of effectiveness or low risk to PFC and ecological functions, should be low priority for monitoring and adaptive management."

These two sentences are intended to clarify that monitoring and adaptive management should focus on those activities whose outcome is less well known.

300(2)(b)

Path B has good monitoring and adaptive management protocols.

Comment noted.

300(2)(b)(ii)(A)

The local government also be required to keep records of all development within the shoreline jurisdiction, including development exempt from permit requirements, and to transmit such records to DOE which will develop a database of such records. Every time anybody asks us for any kind of database, they're talking 30 million dollars.

Ecology believes the number of records and types of information required to be collected are well within the capacity of existing database systems of Ecology and most local governments. Ecology doesn't expect this to be a significant burden.

300(2)(b)(ii)(C)

The rule would require Ecology to evaluate a minimum of 100 completed projects per year to assess compliance with permit or exemption requirements. In addition to this monitoring, long-term monitoring should be required to assess the impacts of development and compliance with SSDP requirements over time, including compliance with mitigation requirements. Such long-term monitoring is essential because ecological impacts, both negative and positive, may take years to become apparent. Similarly WAC 173-26-300(2)(e), cumulative impacts, does not include long-term monitoring of the environment. In the absence of long-term monitoring, assessment of actual cumulative impacts from development will be difficult to complete and will make application of adaptive management concepts ineffective. With respect to developing inventories, one purpose is to establish a baseline. As such, periodic monitoring of the environment must be included as an element of programs to determine the success of the program.

Provides for a minimum of 100 visits of complete projects per year. Given 39 counties and the variety of activities that will be evaluated, this level of effort will provide no meaningful nor statistically relevant information regarding the adequacy of implementation. This monitoring program creates the mere illusion of implementation monitoring.

Instead of mandating Ecology to use a statistically valid sampling approach in its monitoring of permitted development projects in relation to affected shoreline resources, the rule requires a mere statewide "minimum of 100 completed projects per year." There are several problems with this approach. First, 100 site visits (which are likely to be the default due to funding constraints) will likely not be sufficient to adequately gage the success or failure of individual master programs (with 247 statewide). Second, this approach focuses on monitoring incremental development impacts at the completion of construction, which will likely miss the more onerous, cumulative impacts from single and multiple developments, over time.

There is no provision to revisit development projects to determine if regulations are being adhered to and if PFCs are being maintained into the future. Recent environmental program audits completed by King and Thurston counties reveal widespread, pervasive compliance failures, emphasizing the need for improved education, enforcement, and project tracking through time.

Ecology is making a great leap of faith to assume 100 projects could be completed within one year under this program. When this doesn't occur, then will the Department be in violation of these rules if they cannot visit a minimum of 100 completed projects?

In addition to Ecology visiting completed projects each year, local governments should be required to visit 1% of all completed permitted projects per year, selected randomly, to determine whether permit conditions have been complied with. Please define what "measurable performance criteria" means. We suggest a percentage of development actions be visited (i.e. 25%).

Local governments are already required to ensure permit enforcement compliance.

Concerning Ecology's role in evaluating 100 projects, the intent of the provision for Ecology to monitor 100 projects is to evaluate the effectiveness of the rule in meeting its goals. Ecology expects that other local, regional and statewide monitoring efforts will also be used in that evaluation.

Ecology selected a fixed number of projects to make workload demands more predictable. Ecology based the number because it is achievable, based on recent experience in evaluating compliance with existing staff.

Development actions are variable from year to year. In recent years, the combined total of actual permits (SDPs, CUPs, and variances) issued annually by local governments has been approximately 700-800. The number of exemptions issued is currently unknown.

The rule requires that local governments define measurable performance criteria for their jurisdiction. Ecology believes that the diversity of Washington's shoreline environment makes it inappropriate to set statewide performance criteria applicable to all jurisdictions.

300(2)(b)(i)(F)

This is vague. Under what circumstances would plan updates be required? We suggest that you delete the second sentence (which begins with "In some cases...") and insert the following: "When plans fail to achieve the performance standards identified in subsection (C) above within a reasonable timeframe, they shall be adjusted to achieve these goals."

The intent of this provision is to give direction to local government to identify a procedure for adjusting the broad range of management activities that take place under shoreline management. This could mean changes to how projects are conditioned based on new "Best Management Practices," or other changes in how the SMP is implemented that do not require an amendment to the SMP.

300(2)(c)(i) Ecological functions - General

This section states that "This chapter implements the above-cited RCW policy through the protection and restoration of ecological functions." Ecology should better articulate this policy throughout this document by referring not just to no-net loss, but to the concept of net gain and to establish meaningful monitoring that allows for the measurement over time of net gain in public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life.

Please add to end of section 300(2)(c)(i): "Master programs shall contain provisions to protect and to contribute to "THE NET GAIN" and to the restoration of ecological functions…"

This objective is addressed in the last sentence of 300 (2)(c)(i), which states that

"Master programs shall contain provisions to protect and to contribute to the restoration of ecological functions and ecosystem-wide processes..."

It is also addressed in Task 5 of section 300(2)(c)(ii), which requires local governments to demonstrate that master program provisions "establish shoreline policies, regulations and environment designations as appropriate to protect PFC and ecological functions along those shorelines that are "properly functioning" and "at risk," and to restore ecological functions of those shorelines "not properly functioning" to the point to where they effectively contribute to and eventually attain PFC for all shoreline areas within the watershed, sub-basin, or shoreline area within question."

The guidelines apply this concept on the planning level - there are no requirements to attain PFC project-by-project.

300(2)(c)(i)

Restoration of ecological functions for public benefit means reversing owners actions, which were legal and proper when first accomplished. Such owners must be compensated for loss of property value caused by the "restoration".

The guidelines only apply restoration requirements to new development. Existing legal uses not proposing changes or new development would not be required to address restoration.

300(2)(c)(i)

Ecology should establish a clear policy of banning the use of hazardous toxic chemicals in aquatic and shoreland areas in order to protect the public heath and the environment.

This section establishes broad policy on the protection of ecological functions and the inclusion of a specific policy on toxic chemicals would be inappropriate in this section. Use of toxic chemicals is regulated by other federal and state laws.

300(2)(c)(ii) Functions related to properly functioning conditions

The proposed SMA guidelines heavily rely on Properly Functioning Condition as a standard with regulatory effect, but "PFC" is a mere policy of NMFS that has never been subject to notice, comment, and critique even those it is given pervasive regulatory effect. See proposed WAC 173-26-020(36) (defining "Properly Functioning Conditions"); WAC 173-26-300(2)(c)(ii) (Part IV SMPs must satisfy PFC as a standard for approval). PFC is based on a survey of pristine conditions and is inappropriately applied to urban and even rural landscapes where natural PFC conditions no longer exist and cannot be feasibly attained. Because PFC has never been subject to public comment, the scientific validity and regulatory effect of the standard is poorly understood and should not be incorporated into rules implemented by the State of Washington.

As used in Path B, PFC refers to that subset of broader ecological functions identified as critical for T&E species in a specific setting. Other uses of the term "PFC" that are based on surveys of pristine conditions do not apply to this rule.

Ecology has revised the definition of restoration to clarify that where restoration is called for it does not necessarily mean a return to pristine conditions. The guidelines call for no further reduction in PFC for T&E species and contribution toward achieving PFC for T&E species over the long term.

300(2)(c)(ii)

This section requires restoration of threatened and endangered species habitat. Local governments' obligations with respect to the listed "threatened" Chinook species are those set forth in the NMFS' 4(d) rule. Those obligations do not include habitat restoration, which is more akin to the species recovery obligation borne by federal agencies under 15 U.S.C. 1533(f). As noted above, DOE should not reduce the effectiveness of Path B by adding requirements that exceed ESA mandates.

The section specifically requires that master programs be directed toward the maintenance and attainment of properly functioning conditions. These provisions were deemed necessary to implement the policy of the SMA regarding protection of the shorelines resources against adverse effects while addressing the need for certainty associated with consideration of the guidelines under the ESA consultation requirements. Restoration efforts directed toward attainment of PFC are required of new development when and where appropriate and feasible under the law. The SMPs also include consideration of non-regulatory efforts.

300(2)(c)(ii)

Evaluating whether a site has achieved PFC or how to condition a project in order to achieve PFC is ambiguous. Careful thought should be given to this requirement. What types of land use activities will trigger this requirement? For example, is this requirement triggered by adding on a deck to your house or construction of a bulkhead? Also, monitoring of this will take a great deal of effort and could be very arbitrary if specific standards aren't created.

While the County supports the concept of PFC, further information is needed regarding the details of PFC. It is clear what process the County must follow in order to adopt a master program that includes provisions that address maintenance of PFC and attainment of PFC, however application of these provisions to specific projects requires more specific information in the guidelines before Island County can agree to such a standard. Specifically, determining whether a projects achieves PFC based on the conditions of approval and monitoring the project to ensure it continues to achieve PFC needs to be outlined in detail. Not addressing this issue at the outset causes concern in how it is administered.

Just as is currently stated in the draft guidelines, achieving PFC on every lot, especially those that are already highly degraded, is probably not an achievable goal. Path "B" guidelines must include a basis for determining to what extent different types of development will be required to achieve PFC, what criteria will be used to make this determination, who will make this determination, and if the conditions that are placed have been approved by DOE and the County, who is responsible for defending this decision.

The rule requires that local governments direct SMP provisions toward achieving PFC for T&E species. This requirement is applied at the planning level, not project-by-project. The "trigger" for consideration of small projects is the cumulative impact analysis in Task 3.

300(2)(c)(ii)

This section states that local governments must demonstrate that master program provisions maintain PFC where it occurs and contribute to the attainment of PFC where it has been impaired. It also states the methodology for local governments to demonstrate conformance to this standard. Do local agencies have the resources, funding, and expertise to establish and regulate PFC within their jurisdictions? How much of this information will be left to the applicant to satisfy? How will the current time frame for permit approval be affected for both exempted activities and substantial development activities? Local agency authority over PFC for fish species would overlap with WDFW jurisdiction.

Might there be a way to develop a concerted effort for protection of the species and avoid duplicative regulatory processes? We would like to see some timing limitation on providing the letter of exemption by local government.

Ecology is preparing guidance materials and is seeking funds to support local governments in this effort. The level of specificity in the SMP's and the amount of work to be done by the applicant will be determined by the local government. Requirements for permits are set in statute, and can only be changed by legislative action. One of the goals of these guidelines is to assure coordination of regulatory requirements among state and local agencies. Ecology has consulted with WA Department of Fish & Wildlife.

Concerning timing limitation on providing the letter of exemption, local governments may place time limits on letters of exemption.

300(2)(c)(ii)

This section makes clear the need to maintain existing critical habitat and restore degraded areas necessary for the survival of listed species. One concern we have is how other sections of the rule, such as those setting standards for uses within certain environments (section 26-310) or those found in the vegetation management section [section 26-320(5)], may be inconsistent with the standards identified here. At the very least, this approach will require another overlay, on top of "environment" designations, which may be confusing. While, with the exception noted below, we support this approach, the relationship to other sections of the rule should be clarified. Attainment and maintenance of PFC is the "bottom line" if the species are to be recovered.

The intent of this section is not to create an "overlay," but to provide an "underpinning." The tasks for achieving the standards identify processes tied to the relevant sections of the guidelines.

300(2)(c)(ii)

Section does not require that PFC be attained where proper function has been impaired, merely that improvement of impaired conditions must occur. If the proper conditions do not exist for fish, populations will not be protected or rebuilt. This language is inconsistent with the requirements of ESA, and is not based on best available science.

The state of Washington and federal agencies are not relying solely on the SMA in efforts to recover populations of listed fish species. The authority of the SMA is limited to regulating new uses and development within the statutorily-defined jurisdiction. The rule is designed to assure that where development is approved it will "protect PFC and ecological functions along those shorelines that are "properly functioning" and "at risk," and to restore ecological functions of those shorelines "not properly functioning" to the point to where they effectively contribute to and **eventually attain** PFC for all shoreline areas within the watershed, sub-basin, or shoreline area within question *(emphasis added)*."

300(2)(c)(ii)

There seems to be a contradiction in the statement "Master programs must include provisions that will result in the long-term improvement of impaired conditions even if those provisions, in themselves, will not achieve PFC in the foreseeable future". While we understand the intent of this statement, local governments would not be able to track the effectiveness of such provisions. It would be less confusing if the second sentence were removed.

The sentence cited in this comment reflects the reality that SMP provisions are only part of the solution to improving habitat for listed species in Washington State.

300(2)(c)(ii) Task 1

Task 1 should be modified by adding the term "affected Indian Tribes" to the list of agencies that may have relevant data and/or information.

Section 300(3)(b)(iii) addresses this concern. This section states that "Prior to undertaking substantial work, local governments shall notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods for coordination and input. Contact the individual tribes or coordinating bodies, such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified."

300(2)(c)(ii) Task 1

Under Task 1, include identification of "habitat utilization" of the affected species within a jurisdiction. Task 2 should reference the NMFS document "Coastal Salmon Conservation: Working Guidance for Comprehensive Salmon Restoration Initiatives on the Pacific Coast", dated September 15,1996, as a guide to assist in the identification of the baseline conditions as they relate to salmon species listed under the ESA. In the penultimate sentence of Task 4, change "shoreline" to "riparian". Revise the last sentence in Task 4 to read: "In making this evaluation, the department will consider the ways that master program provisions will protect existing habitats with PFC, and restore impaired habitats to PFC over time."

Ecology respectfully declines this suggestion for change to Task 4, as "shoreline" is an appropriately broader term than "riparian" in this context. The intent of the final sentence is captured in the introductory paragraph of section (ii), which declares that "several provisions in Part IV of this chapter require that master programs be directed toward the maintenance or attainment of "properly functioning condition" for T&E species. This subsection amplifies the intent of those provisions and describes the method for determining whether or not a master program meets the requirement for PFC."

300(2)(c)(ii) Task 4

Under Task 4, Ecology should clarify that an evaluation of a proposed master program and its potential impacts on PTE species is based on the cumulative impacts of the limited future development (RCW 90.58.020) that might take place in the future.

Cumulative impacts are a part of this evaluation, in task 3, which asks local governments to "Consider cumulative impacts in the jurisdiction. Accomplish this task through the cumulative impact analysis described in WAC 173-26-300(3)(d)(iii). Establish master program provisions to address cumulative impacts to properly functioning condition as described in WAC 173-26-300(3)(g)."

300(2)(c)(ii) Task 5

Task 5, Page 94, calls for regulations, quote, to restore those shorelines not properly functioning to the point where they effectively contribute to and eventually attain PFC properly functioning condition, for all shoreline areas within the water shed sub-basin or shoreline area within question, unquote. The State Environmental Policy Act calls for, quote, a balance between population and resource use which will permit high standards of living in a wide sharing of life's amenities and fulfilling the social, economic and other requirements of Washington citizens. The Shoreline Management Act calls for the utilization of shorelines and fostering all reasonable and appropriate uses and says that, quote, alterations of the natural condition of the

shorelines and shorelines of the state shall be recognized by the department, unquote. These guidelines do not comply with either SEPA or the SMA.

This draft rule allows planners to designate areas that are at PFC ("properly functioning condition") and those that are not, without clearly defining criteria for doing so. There is a real danger that areas will be erroneously designated non-PFC, so that they can be subject to lower standards. For those areas at PFC, the emphasis is on restoration, rather than prevention of harm. Those remaining areas of the state that are at PFC must be protected if we are to achieve recovery of endangered species.

It is also necessary to clarify how planners will identify the three classes of landscape: "PFC," "at risk," and "not properly functioning." To begin with, it is not clear what scale will be used. We suggest that this be done on a site by site basis, otherwise there is a danger that critical PFC habitat may be lumped into a larger area which has been degraded and the need to preserve these areas might be de-emphasized or lost. It is also unclear how these areas will be defined. As you know, there is a gradient of habitat and the lines between "properly functioning" and "not properly functioning" may not be all that clear.

The directive to restore ecological functions in Task 5 describe the direction that SMPs should be headed. Ecology believes that local governments can make progress towards restoring ecological functions while also allowing "reasonable and appropriate" development as required by the SMA. Tasks 1 through 4 describe the steps local governments must take to get to Step 5. The diversity of local governments in Washington state (small, large, urban, rural, etc.) and the basic structure of the SMA mandates that these steps be tailored at the local level.

300(2)(c)(ii) Task 5

If designations lead to different management strategies depending on how the land is classified. There is a suggestion in "Task 5" on page 94 that areas that are "not properly functioning" rely on restoration strategies as opposed to ones that would involve maintaining existing habitat. It should be clarified that existing habitat necessary for PFC should be maintained wherever it is found. Similarly, degraded habitat necessary for PFC should be restored regardless of where it is found.

Ecology has revised Task 5 to read: "Establish shoreline policies, regulations and environment designations, as appropriate to protect PFC and ecological functions along those shorelines that are "properly functioning" and "at risk," and to restore ecological functions of those shorelines "not properly functioning" to the point to where they effectively contribute to and eventually attain PFC for all shoreline areas within the watershed, sub-basin, or shoreline area within question."

Because the goal is to "contribute to and eventually attain PFC," this presupposes that local governments won't allow further degradation of areas that are "properly functioning" wherever they are found. This is reinforced by provisions throughout the guidelines that require protection of ecological functions.

300(2)(c)(ii) Task 5

Task 5, on page 94, should be modified by adding "streams" to the fourth bullet. Also, the last bullet should be modified to require compliance with state water quality standards.

The bullet is one of a list of objectives relevant to PFC for T&E salmonid species, and reads: "Protect and restore timing, volume, and distribution of large woody debris (LWD) recruitment by protecting trees in **riverine** and marine habitat conservation areas." The word riverine includes streams.

300(2)(c)(ii) Task 5

Bullet nine (following Task 5 on p.95) which begins "protect and restore the species composition..." should be expanded to include marine areas as well as riverine and wetland areas.

The objectives relevant to PFC are several. Most of the objectives in Task 5 are appropriately specific, except the final objective referring to marine shoreline conditions. More elaboration should be given to describing marine shoreline conditions that support PTE and priority species.

The last objective relevant to PFC for T&E salmonid species reads: "Protect and restore marine shoreline conditions to support T&E species." This statement is a "catch-all" and the key objectives for marine shorleines are found in the bullets above, for example: Protect and restore the distribution, diversity, and complexity of watersheds, **marine environments, etc...; Protect and restore spatial and temporal connectivity within and between watersheds and along marine shorelines**. Protect and restore the physical integrity of the aquatic system, including **shorelines, beaches, banks, marine near-shore habitats**, and bottom configurations; Protect and restore timing, volume, and distribution of large woody debris (LWD) recruitment by protecting trees in riverine and **marine** habitat conservation areas. Protect and restore the water quality necessary to support healthy **aquatic** and wetland ecosystems; Protect and restore the sediment regime under which aquatic ecosystems evolved.

Ecology will provide more guidance on achieving these objectives in technical assistance materials.

300(2)(c)(ii) Task 5

Many of the objectives listed for the Properly Functioning Conditions (PFC) can and are met by proper reclamation of floodplain mining operations. However, this objective is not well defined. One interpretation of the hyporheic zone has included a riverine connection to the hyporheic network that has ranged from valley wall to valley wall. The delineation of the hyporheic network is extremely difficult. If this interpretation is applied in this regulations, then jurisdiction, and the accompanying restrictions, mandated studies, and regulation, could apply far beyond the 200-foot shoreline boundaries, to include the entire 100-year floodplain and beyond. Argument may be made to include any and all valley alluvium fill. While this interpretation may be refuted, it would be at the cost to the applicant and industry to prove where and how this interpretation would be wrong, as the burden of proof is on the applicant, not the regulator.

The provisions of this section are a methodology for local government to demonstrate conformance to the requirements of maintenance and restoration of PFC. They are not directly a requirement for individual permit applicants. If part of the project is within shoreline jurisdiction then the impacts of the total project on shoreline resources must be evaluated (see *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 509 P.2d 390). The jurisdiction of the SMA in river valleys includes the 100-year floodway and may include up to the 100 year floodplain.

300(2)(c)(ii) Task 5

NMFS integrated many of the concepts of the Forests and Fish Report into Path B. Both the water types and the types of activities that occur on shorelines subject to regulation under SMA are significantly different in type and scale from those which occur in those areas of the state which are primarily devoted to commercial forest activity. These differences will lead to difficulty in implementing policies which achieve PFC through the SMA, and "skip"

an important policy step required under ESA: recovery planning under Section 4(f). These differences come into play at -300 2(c)ii of Task 5, which states: "Establish shoreline policies , regulations, and environment designations to protect PFC along those shorelines that are properly functioning and at risk, and to restore those shorelines 'not properly functioning' to the point where they effectively contribute to and eventually attain PFC within the watershed, sub basin, or shoreline area."

The critical portion of the above statement is "to restore," especially when viewed in context with other sections of the document, such as 173-26-320 2 (c) iv (b): "Restoring degraded shoreline areas wherever feasible. Redevelopment activities along shorelines provide opportunities to achieve setbacks and ecological restoration."

The rule attempts to be consistent with the Forest and Fish Report while still addressing the variety of landscapes found on the state's shorelines. And, while current practices do often result in restorations projects which are isolated and unconnected to larger restoration needs, the rule's requirements for inventories and restoration policies will provide the larger framework necessary for project by project restoration projects to result in benefits to the environment.

The overall intent of the rule is to plan regulatory actions and other related government actions in a coordinated fashion such that restoration strategy should not be dependent solely on permitted development or redevelopment.

300(2)(c)(ii) Task 5

Clallam County, having long experience with restoration of degraded shorelines, also has similar language in its Critical Areas Code, which requires restoration of degraded wetland, stream, or shoreline buffers. In those areas of the state that are subject to the SMA, restoration of ecological function will require a coordinated set of activities (including regulation, restoration, acquisition, reconfiguration of infrastructure, etc.) across multiple parcels of individually-owned property. This is due to the multiple scalar effects of the relatively large size of the rivers and marine shorelines subject to SMA, and the relatively greater density of land-use in the areas adjacent to large, navigable rivers and lakes, or the marine shoreline.

Restoration at smaller scales will be either a useless collections of restoration "accidents" (linked neither in space or time) or counterproductive, if these restoration projects or activities must later be moved or modified to allow restoration on an appropriate scale. A restoration strategy which is dependent upon permitted development or re-development is restoration by "accident" or "lottery." By definition, this type of restoration cannot be comprehensive in scope as required by the guidelines, and would be ecologically and economically wasteful.

This section establishes a method for local government to diagnose the ills of the aquatic system within local jurisdictions and establish appropriate regulatory measures based on that diagnosis.

300(2)(c)(ii) Task 5

NMFS itself, in response to the comments on the draft 4(d) rule, recognizes that restoration planning, much less recovery planning required under section 4(f) of the act, will be along-term process. NMFS also recognizes the important policy steps that must take place under section 4(f). These issues will require careful consideration beyond any individual local government's jurisdiction under SMA, and requires that the policy steps of section 4(f) be carried out prior to implementation of large-scale, comprehensive restoration actions required in the draft guidelines. These requirements put local governments in the position of having to make a "hobson's choice" of meeting the requirements of the 4(d) rule on one hand, or causing applicants unnecessary expense and delay to doubtful or negative environmental/ESA results on the other.

It forces local governments and The Department of Ecology itself to do things which governments do not allow private citizens to do: speculate on future actions or activities. Such future actions and activities are currently unknown, poorly understood, legally questionable, and unfunded. Section 4(d) of the ESA is similar to the section of the Hippocratic oath, that states "First, do no harm." The section should be limited to that concept. Taking active measures prior to diagnosis of the ills which affect a specific patient can lead to unintentional side-effects, worsening overall condition, and death. NMFS and Ecology should re-think these sections of the guidelines.

Ecology does not believe that anything in the rule is counterproductive to efforts which must be made under the 4(d) rule. Protection and restoration data and concepts that must be developed on a jurisdiction by jurisdiction basis under the rule are basic to maintaining and restoring shoreline ecosystems.

300(2)(c)(ii)

King County strongly supports the provision in the guidelines that "master programs be directed toward the maintenance and attainment of properly functioning condition[s]..." Species recovery must always be considered in a context of not only protection, but also of restoration.

Ecology agrees with this concern.

300(2)(c)(ii)

This section has the unintended result of limiting the use of the ferry terminals, e.g., the size of boats used by WSF in the future and whether temporary modifications can be made (e.g., temporary passenger only facilities) to allow normal maintenance and repair activities.

The provisions of this section are a methodology for local government to demonstrate conformance to the requirements of maintenance and restoration of PFC. They are not directly a requirement for individual permit applicants.

300(2)(d) Preferred uses

Ecology's use of the term "water-related" has no basis in the SMA legislation and must be deleted from the use preferences and priorities in (ii) and (iii) on page.

The policy of the SMA, as established in 90.58.020, is not so specific as to require that only water dependent uses should be allowed. The provisions for water-related and water-enjoyment uses, as well as water dependent uses, is consistent with interpretation of the SMA since its inception. The term "water-related" is a part of shoreline jurisprudence and was developed by the Shorelines Hearings Board and the courts as part of judicial interpretations of the SMA.

300(2)(d)(i)

"Reserve appropriate areas, <u>such as undeveloped shorelines</u>, for protecting and restoring ..."

Ecology does not believe this example is necessary to clarify the intent of the provision.

300(2)(d)(ii)

"... Harbor areas and areas that are generally considered navigable for <u>transportation and</u> commercial purposes ..." Also, "enhancement" is listed in this section but is not defined.

Ecology respectfully declines the suggestion, because in this context, transportation is a commercial purpose.

300(2)(e) Cumulative impacts

Some types of shoreline developments do not cause measurable ecological harm as individual development projects but can cause significant ecological impacts when considered together with similar ., projects on a specific shoreline. This is an incorrect statement: Individual bulkheads can and do cause measurable harm by themselves. As coastal geologists would confirm, one individual bulkhead will likely harm neighboring properties. The statement is in errors please delete it.

Ecology believes the statement in the guidelines regarding bulkheads and cumulative impacts, taken as a general illustrative comment, is accurate and no change is needed.

300(2)(e)

To avoid cumulative impacts the impacts must be recognized before they are or become substantial. This assessment should include all development requiring shoreline permits. If the area is experiencing substantial cumulative adverse impacts restoration and rehabilitation must be required.

Ecology agrees that the assessment should include all development requiring shoreline permits, and believe current language addresses this. The requirement to "identify potential ecological impacts that could occur from the maximum amount and extent of development allowed by the master program" includes development requiring shoreline permits. SMPs must then address the maximum ecological impacts.

300(2)(e)

This section should be rewritten to require the ecological impacts analyses including an assessment of existing impacts as well as potential future impacts. Also, it is unlikely that cumulative impacts will be avoided if additional development and vegetation is allowed to be removed within areas under shoreline jurisdiction as allowed in the Proposed Rule.

The suggestion that ecological impact analyses be required under the "cumulative impacts" section is already addressed under the inventory requirements; see 173-26-300(3)(c). We do not agree with the statement that "…it is unlikely that cumulative impacts will be avoided if additional development and vegetation is allowed to be removed…" The impacts of allowed development and vegetation removal will have to be addressed in some manner under these guidelines.

300(2)(e)

We approve of the requirement for local governments to consider cumulative effects. Many counties have ignored cumulative effects when approving development. Cumulative impacts are the single largest contributor to the decline of shoreline habitat in Puget Sound. This section represents an important step forward in addressing the problem.

Comment noted.

300(2)(e)

In addition to the method described to accomplish the cumulative impacts objective, we recommend that master programs adopt resource objectives with defined performance standards. Resource objectives provide a target of PFC to be achieved and can allow a perspective of allowable impacts.

Path B contains broad performance standards and requires local governments to refine these standards as appropriate. The cumulative impacts identified through this process are required to be addressed in relation to those standards.

300(2)(e)

End of third paragraph. Comment that repairs to existing public infrastructure facilities are not considered a cumulative impact.

Existing facilities are the base from which cumulative impacts are considered.

300(2)(e)

This section completely prohibits development, when considered cumulatively, that "hinders] .. . the attainment or maintenance of [PFC] for PTE species." The local cumulative impact analysis may result in the prohibition or conditioning of every project in the shoreline jurisdiction.

The local cumulative impact analysis should result in allowance of an appropriate level of new development that will not result in significant adverse impacts.

300(2)(f) Environmental impact mitigation

While the latest proposal makes clear that sequenced mitigation is required, this section should be made stronger. Any ambiguity in regard to mitigation is cause for concern given Ecology's recently released Wetland Mitigation Evaluation Study: Phase 1. Similar to the 1998 King County study, Ecology's analysis found an extremely poor compliance rate (merely 29% of projects in full compliance). Provisions, such as relying on "conditional use permits," provide little assurance that existing mitigation schemes protect the resource.

The section emphasizes that lower priority measures such as "compensatory mitigation" are to be applied only after higher priority measures, such as avoidance of impacts.

300(2)(f)

Amend the first sentence in this section as follows: "Because the Shoreline Management Act LIMITS ALTERNATIONS OF THE NATURAL CONDITION OF THE SHORELINES OF THE STATE, "IN THOSE LIMITED INSTANCES WHEN AUTHORIZED TO THOSE WHICH ARE PARTICULARLY DEPENDENT ON THEIR LOCATION ON OR USE OF THE SHORELINES OF THE STATE IT IS APPROPRIATE TO include measures to mitigate environmental impacts and implement the Shoreline Management Act's environmental protection objectives.

Ecology respectfully declines this suggestion, because the cited language is the policy of the SMA, and so does not need to be cited in this section.

300(2)(g)(i) Assurance of development compliance - Letters of exemption

All local governments must also include a "mechanism for assuring that the completed development meets the conditions and mitigation requirements of the permit or letter of exemption . . ." This can include "a performance bond or expressed conditions or penalties." Further, local governments "must perform an inspection of all development permitted or conditioned with a letter of exemptions and take measures to ensure correction of conditions not in compliance." These requirements are onerous for both property owners and local governments, greatly increasing the costs of single-family homes. This is inconsistent with legislative direction that single-family residences be given priority in altering the shoreline natural condition. Such enforcement mechanisms further demonstrate the "letter of exemption" procedure is simply another name for a permit. The requirements for letters of exemption and enforcement measures related to statutorily exempt development should be eliminated from the rule.

It subverts express legislative intent, forces single-family homeowners into the

lengthy and expensive permitting process, and creates exorbitant costs for local governments. Individuals hoping to build a home will be forced into a permit quagmire that takes several years and thousands of dollars to navigate.

DOE may not use SMA approval as a basis for requiring local governments to regulate and enforce SMP requirements against exempt activities.

The new concept of requiring letters of exemption for activity that the SMA exempts from SMA permit requirements is indeed a newly-required permit by another name, complete with spelled-out conditions and state oversight and follow-up. It will severely impact shoreline management exempted shoreline single family homes, both new and remodeled, as will the new cumulative impacts section which is a tip-of-the-hat to the People for Puget Sound group, which has long railed against residences along the shores.

The SMA in RCW 90.58.140(1) requires local government to assure that all development in the shorelines is consistent with the requirements of the act and the local master program. Even though many activities are not required to get a permit ("exempt"), the activities must still comply with the SMA and the local master program. See response to definition for "letters of exemption" in 020(26). The letter of exemption was created by local government as a means to document compliance for development that is not substantial development. It was subsequently adopted by Ecology in the mid-1970's as a means of coordinating local SMA actions and related Corps of Engineers permitting. Path B extends the use of this existing tool to provide a means of compliance tracking. Except as previously required, it applies only to those jurisdictions that choose path B.

300(2)(g)(i)

The Department of Ecology has claimed "the primary functions of the substantial development permit are to assure that the adjacent property owners and the public: 1) receive notice of the proposed development; 2) have an opportunity to comment on the projects prior to a local decision; 3) have the ability to appeal the local decision to the Shorelines Hearings Board" (July 11, 2000 e-mail from Neil Aaland to Rep. Mulliken). This claim is incorrect. The first purpose of a permit is to allow government review of a project prior to the project's implementation. But this was not the regime set in place by the Legislature. Local landowners themselves were charged with regulating their compliance with the SMA in building single-family residences, and the agency cannot reverse this determination simply by an exercise in semantics, and should not attempt to do so.

See response to definition for "letters of exemption" in 020(26). The commentor's reading of the law is inconsistent with the language of the law and nearly 30 years of Shoreline Hearings Board and Supreme Court decisions.

300(2)(g)(i)

Ecology should note that placing additional requirements upon emergency transportation repair projects which are normally exempted from obtaining a shoreline permit process may result in hardship to the public, especially in those cases where the ferry is the only form of public transportation. The last paragraph of this section describes project that do not require a letter of exemption, and emergency transportation repair project should be included in that list.

This section describes a mechanism, termed a "letter of exemption", to monitor and ensure all development is consistent with the applicable SMP, but it is not clear how conditions are to be applied to these letters of exemption to guarantee the restoration of PFC (as detailed under I73-26-330(2)(f)). Without assurances of how, when, and where such conditioning will be applied, there is little to prevent this mechanism from degenerating into a "paper trail" of new development activities with little/no substantive value to maintaining sensitive shoreline ecological functions. Historically, single-family residential development (SFRD) has had an enormous negative impact on the condition of shoreline habitat due to: (1) limited regulatory review, (2) its extensive and pervasive distribution along shorelines, and (3) lack of mitigation measures. Extending and refining the regulatory review for this development is a high priority for the tribes.

How will this proposed rule requiring a mechanism such as a letter of exemption affect the current shoreline exemption permit process for emergency activities and normal maintenance and repair? Will activities normally exempted under the current WAC be required to satisfy various habitat assessments and PFC requirements? Can we avoid duplicative processes by forfeiting this process if our action has already been approved under ESA Section 7 or programmatic coverage?

Requiring governments to process a letter of exemption for all road construction, clearing, grading, etc. that is exempt from shoreline permitting is an unnecessary burden on staff and will cause needless delays to projects. Staff time should be reserved for permit review, not preparing form letters. Recommendation - Allow local governments to issue conditions, etc. for exempt project via methods other than a review process and letter issuance. For instance, the shoreline conditions, requirements or limitations could be conveyed to the applicant as an attachment to other required permits, such as clear/grade permits, street use permits, etc. Typical conditions could be created for each type of development listed in section (i) that are appropriate for the activities normally associated with that type of development.

Section is too vague or unclear: The statement "take measures" does not provide enough description and is unclear. Defining what measures to take would be helpful.

The provisions of the SMA leave local government broad latitude to design permitting systems that suit their system.

The exempt status of emergency repairs is not altered by these guidelines. The letter of exemption is a means of documenting the terms and conditions of an exemption to assure consistency with the regulations. Ecology does not expect this will result in unusual delays. Violation of the regulations is an enforcement issue.

300(2)(g)(i)

The guidelines should require that the exemption for the repair of existing levees and revetments be conditioned on compliance with the WDFW Guidelines for Bank Stabilization.

This section is procedural in nature. The substantive requirements are contain in later sections.

300(2)(g)(i)

This subsection needs to be clarified. It is not clear as to whether or not development that is normally exempt for the requirement to obtain a shoreline permit that is proposed to occur in the Channel Migration Zone will have to obtain a letter of exemption or not. The language as drafted only discusses development that is waterward of the ordinary high water mark or bank full width.

Should be changed from waterward of the ordinary high water mark to channel migration zone. It has been clearly demonstrated that development within channel migration zones prevents the formation of properly functioning conditions.

If the development is normally exempt for the requirement to obtain a shoreline permit, and is one of the listed uses described in this section, and it is in

that portion of a CMZ that is within shoreline jurisdiction, then it will be required to obtain a letter of exemption.

300(2)(g)(ii) Compliance assurance mechanism

Under "Path B", local governments will be required to track all permits issued and enforce permits with post construction site visits. In order to develop tracking systems to monitor cumulative impacts local jurisdictions will have to invest in expensive computers and software programs. There will also be additional costs as they hire and train additional staff. These proposed Guidelines will require additional enforcement by local jurisdictions thus adding to their responsibility. This will add significant costs to local governments as they hire additional staff and provide adequate training. How will local governments know if the training is adequate? Will DOE provide such training?

The requirement that local governments properly enforce the SMA has been in place since 1971. Ecology recognizes that there will be additional costs associated with implementing SMPs based on the new guidelines. Ecology will provide training to the maximum extent possible.

300(2)(g)(ii)

You are proposing to add an additional layer of bonding for development. Mining must be exempt from this, as it is already required to have bonding for reclamation, through DNR.

Performance bonds, it appears, would be in addition to any bonds implemented by Washington DNR for reclamation. As with DNR bonding, the bond will not be released until all conditions have been satisfied. This implements an undue financial burden on the operator, requiring a double bond for a single purpose. A single bond should cover all requirements and be based on the cost of completion of reclamation as defined in the accepted operating plan. The DNR bonding fulfills this requirement. If reclamation is not completed, or additional damage is incurred, the bond is forfeited. The single bond should be sufficient to cover these costs. The requirement for a second bond is redundant and places an undue financial burden on the operator, landowner, and business.

Double bonding is not required if the bond is prepared to also satisfy shorelines requirements. If a bond for DNR reclamation is configured to also incorporate the local governments requirements placed upon the proposed development to ensure it does not cause significant ecological impacts or adverse cumulative impacts (WAC 173-26-300(2)(g)(i), then no redundancy exists.

300(2)(g)(ii)

Per RCW 36.32.590 Building construction projects - County is prohibited from requiring state agencies or local governments to provide bond or other security as a condition for issuance of a permit. We feel there may be inconsistency in the draft rule with this policy.

Section 300(2)(g)(ii) addresses the comment as follows: "In the case of a bond, the bond shall not be released before a final inspection indicates the bond conditions have been met. Bonding requirements for projects by local governments and state agencies are limited by RCW 36.32.590."

300(2)(g)(ii)

Under Subsection (ii) add a requirement that any performance bond include a condition that the amount bonded shall be used to restore or remediate the impacts from the development should the bond be forfeited.

The purpose of the bond is to assure compliance with the conditions in total.

300(2)(g)(ii)

Change to: "Such a mechanism shall include a performance bond or expressed enforcement conditions or penalties".

This is a statewide minimum standard. Local governments must include a mechanism, but a performance bond may not always be the appropriate mechanism.

300(3)(a) Steps in preparing an SMP

Please amend Figure 4 to show that public participation is a continuing process that involves every step between 2-8. As shown, Figure implies that public participation only occurs in step 1

Ecology has revised the caption to add the following statement in parentheses to Step 1: "<u>The participation process occurs throughout SMP preparation</u>."

300(3)(b)(i)

This section on participation is one of the weakest in the guidelines. There are no real criteria or additional regulations cited. The following should be added to this section: "Local governments shall establish a mailing list of interested persons who have requested to be notified of master program amendments and/or substantial development permit notices and provide notice as requested. Local governments shall respond in writing to all substantive comments received on master program amendments and/or substantial development permit notices and to any consultation undertaken with other Federal, state, local agency or Indian Tribes."

The requirements for processing SMP amendments are contained in Part II of 173-26 (sections 090 through 160). This includes a provision for notification to interested parties at the local and state level. Local governments are required to write responses to all public comments received by the state during the public review.

300(3)(b)(ii)

"Before undertaking substantial work, local governments shall applicable state resource agencies, <u>utilities districts, and the Washington State Department of Transportation</u>, to identify state interests, .."

Ecology has amended the rule to remove the word "resource" in front of agencies, so agencies such as DOT would be included. The rule now reads: "Before undertaking substantial work, local governments shall notify applicable state ~~resource~~ agencies to identify state interests, relevant regional and state-wide efforts, available information, and methods for coordination and input."

300(3)(c) Inventory shoreline conditions

Mapping of inventoried shoreline conditions "at an appropriate scale" is identified as a requirement. The appropriate scale should be identified. We would recommend that in freshwater systems, mapping should be at the sub-basin scale. For marine shorelines, scale of mapping should be based on drift-cell delineation.

The scale may depend on the type of shoreline or the extent of the local jurisdiction. For example, small, urban sections may require a site by site inventory whereas for large forested areas such detail may not be necessary. The last paragraph of this section discusses the appropriate scale of information related to T&E species.

300(3)(c)

Will the supplied technical information address our local shorelines or will they be at such a scale that we will not be able to apply the information in a meaningful manner?

The regulations also call for the documentation of "information at a scale sufficiently detailed to be able to identify changing; conditions over time", but fail to

specifically identify what scale is adequate for which resources and processes under analysis. To be of value, most of these analyses will have to be performed using data of at least 1:24 000-scale.

Path B will require exhaustive and expensive inventories at a watershed scale. But no one but Burlington cares about Gages Slough because it contains no salmonids. Will entirely new studies of the Skagit River be needed to insure exception to the 4(d) take provision? Who will pay for this?

The new SMP guidelines define standards for shoreline inventories and analyses that will enable local jurisdictions to understand the location and degree of impairment of properly functioning conditions. The inventory and analysis are key pieces in these new rules, as the level of protection afforded areas will depend on what is revealed in the inventory and analysis. The approach is comprehensive and yet beyond the capabilities and resources of most rural counties in the state. How does the State propose to fill this technical gap? The guidelines indicate that Ecology will assist local jurisdictions in this effort but where are the resources for such an endeavor?

There are a number of pieces of inventory information which do not presently exist that will be key to the quality and validity of these analyses, such as maps of 100-year floodplains, sediment accretion areas, sediment transport zones, erosional zones and "feeder" bluffs. To support local jurisdictions in their analyses, DOE should commit the necessary resources to the collection of this critical information.

Ecology is requesting that the legislature provide funding to local governments to carry out these requirements. In addition to funding, Ecology and other state agencies will provide assistance in the way of guidance documents, training, and workshops. Ecology will work with other resource agencies and information sources to identify the level of information available for each of the items in the proposed guidelines.

Ongoing state inventory programs, such as the SSSHIAP project, are adding relevant information, which may be available in time for use in SMP amendment process. During the next year, Ecology will be examining methods to efficiently distribute the latest inventory data as part of the preparation of technical support materials, including Web-based delivery of information. The guidance documents will address some of the specific details, such as the mapping scale, that have been asked during the public comment process.

In some cases such as sediment movement in drift cells, state provided information will be sufficient. Other items, such as riverine pool/riffle ratios, are not available across the state and may require additional local fieldwork.

Note that the more detailed inventories are required only for those shorelines with PTE species and only when Path B is chosen.

300(3)(c)

There is some confusion in the statement "The department will secure services and resources for coordinated, interjurisdictional inventory work." What is the level of commitment of the Department ? Is it only to interjurisdictional work?

Ecology should clarify the third complete paragraph regarding its commitment to securing services and resources for "coordinated, interjursidictional inventory work."

The state should promulgate technical guidance and minimum standards for the inventories. This will avoid many jurisdictions having to "reinvent the wheel" in development of standards, and will also provide for consistency in jurisdictions within the same watershed. This should also provide consistent, comparable data that could be made publicly available by the state.

Ecology has clarified that the agency will support both inter jurisdictional and single-jurisdictional efforts by the following change to section 300(3)(c): "The department will ~~secure~~ provide to the extent possible services and resources for ~~coordinated, inter-jurisdictional~~ inventory work."

300(3)(c)

"... Contact the department to determine information sources and other relevant efforts. Project proponents may depend on this inventory when applying for development permits or exemptions."

Ecology respectfully declines this suggestion. These guidelines are used by local governments to prepare SMPs and do not cover permit review procedures. Determination of adequacy of inventory information must be made at the permit level. In some cases, inventory-level information will be adequate for project review, but in others it will not.

300(3)(c)

It would appear that local governments must comply with the requirements to conduct an inventory only insofar as it is: 1) paid for by the state; and 2) does not involve the collection of new data. We urge you to make the following corrections so that it is clear that this is not your intent. In paragraph 4, which begins with "The Department will secure services...", insert the following after "The Department will...": "work with local governments to assist them in their effort to..." This change clarifies that the Department need not fully fund all inventories but, rather, assist local governments in their efforts to locate funding for this purpose. In paragraph 6, which begins with "Collection of...", in the first sentence, strike the words "is encouraged and". The current wording leaves the impression that collection of new data is "encouraged" but not required.

The guidance states that inventories would only need to be conducted if the state pays for the inventory. In the past; opponents of similar requirements have merely blocked passage of legislative, funding, thereby avoiding this requirement. There should be no linkage to state funding. The guidance does not require that a jurisdiction gathers new information, only rely on existing data that may be old or inaccurate. All jurisdictions must be required to update their database with new baseline information.

Baseline inventories are an essential component of any salmon recovery plan. These inventories should be required to include new information, rather than depending solely on existing information. In many parts of the state there will not be enough existing information available to establish an adequate baseline inventory. We can sympathize with the funding difficulties experienced especially by small jurisdictions, but the requirement for state funding for these inventories will simply result in further delay.

Section 300(3)(c)(i) – (x) sets a minimum level of inventory information that will be required for all shorelines. However, "for those shorelines that affect T&E species, the inventory information shall establish baseline conditions" for a specific list of physical, biological, and land use characteristics.

300(3)(c)

The rule allows local government to use existing information and does not require them to gather new information for shoreline inventories. All jurisdictions must be required to update their databases with new baseline information.

All jurisdictions, whether choosing Path A or B, are required to "update" their databases with all available baseline information.

300(3)(c)

When preparing the shoreline inventory, a collection of available information is encouraged and should be coordinated with other state-wide inventory and planning efforts – to what extent will WA State Ferries resources be required by Ecology or the local government?

To the extent WSF has available information, Ecology expects this information would be provided, where appropriate.

300(3)(c)

This section should clarify that shoreline inventories must be based on an evaluation of historical natural conditions, as well as a baseline of changes since 1971, not, as seems to be implied, an inventory based on today 's substantially degraded shoreline conditions. In addition, Ecology, while acknowledging that baseline inventories are a critical component of SMPs this section appears to limit inventory work only to that funded by Ecology. In the absence of an acceptable inventory, no substantial development permits should be issued in critical shoreline areas.

Historical information is not always available but section 300(3)(c)(ix) includes historical information. See section 300(3)(g) regarding permit requirements where there is insufficient inventory information.

300(3)(c)

In paragraph three, which begins with "The preferred method...", at the end of the first sentence insert the following: "provided that such inventory meets the requirements of this section." Many watershed inventories currently underway do not meet the standards established in this section.

Ecology has revised the rule to address this comment. The rule now reads: "The preferred method for local governments to accomplish a detailed, comprehensive inventory of ecological conditions is to participate in an interjurisdictional state-wide, regional, or watershed-based inventory that, at a minimum, meets the requirements of this section."

300(3)(c)(ii)

Collection and analysis of information includes a list of the five elements of critical areas under GMA, except "fish and wildlife habitat conservation areas" has been changed to "critical wildlife habitats". This should be changed.

Ecology has revised the rule to address this comment. The rule now reads: "Critical areas, including wetlands, aquifer recharge areas, ~~critical wildlife habitats~~ fish and wildlife conservation areas, geologically hazardous areas, and frequently flooded areas, as required by RCW 36.70A.170. See also sections 320(2) and (3)."

300(3)(c)(i),(vi)

This inventory process needs to include utilities and utility corridors. Add the following language: (i) Shoreline and adjacent land use patterns and transportation and utility, (vi) Existing and potential shoreline public access sites, including public rights-of-way and utility corridors.

Ecology has revised the rule to address this comment. The rule now reads: "(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, and vegetation and shoreline modifications in shoreline jurisdiction. (vi) Existing and potential shoreline public access sites, including public rights-of-way and utility corridors."

300(3)(c)(viii)

Provisions are made for jurisdictions to identify gaps and develop strategies for collecting the information. This would indicate that all of the information is not required to be provided in the SMP itself. The analyses would however require all of the information identified in the inventory section if they are to be useful. Clarification of the process for completing analyses is required in the absence of all inventory materials.

We would support this language (which requires identification of "gaps in existing information") if you intend to create a inventory process which results in an incomplete analysis of the landscape. If Ecology fails to require that a complete inventory be conducted and all necessary data be assembled or collected in this initial effort, then local governments will not be able to make important decisions called for throughout the rest of the rule. We would prefer that you make clear that complete inventories, with both new and existing data, are required and then delete this subsection.

Inventory data need not be included in the adopted SMP document. The process for obtaining additional information may vary widely and is too situational to be specified in the guidelines.

The inventory provisions recognize that information may not be available. Section (viii) is intended to ensure local governments at least identify information that clearly would be useful in administering their SMP.

300(3)(c)(viii)

This subsection recognizes the link between ecological functions and priority species as defined by the SMP guidelines. Implications of the ecological functions on priority species will depend upon which level of protection and restoration is being sought. (See definitions section.) Priority species by definition imply a "harvestable level" and will thus require a more comprehensive analysis.

As described in section 020(35), the definition of priority species means "species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels." This does not necessarily imply persistence at a harvestable level.

300(3)(c)(x)

Missing key sentence, should be changed to: "If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological, and historical information." These words were included in Path A but were missing from Path B.

Ecology has revised the rule to address this comment. The rule now reads: "(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological, and historical information."

300(3)(c) para after (x)

Baseline conditions should also include current and historical channel network information (both tidal and riverine), and large woody debris locations, piles, and or jams.

Identification of current and historical channel network information would be covered in determining the CMZ. See responses to comments regarding on the definition of CMZ at Section 020(8).

300(3)(c) para after (x)

A definition for critical populations and critical habitats should be added. SMPs and watershed planning efforts must address these critical populations and their habitats. Critical populations are those that represent a unique genetic legacy or are necessary for ESU

recovery. NMFS is currently in the process of defining the critical populations and associated habitats. Some recovery planning processes may also have defined critical populations and habitats. Identification of critical populations should be part of the inventory of shoreline conditions efforts provided for in section WAC 173-26-300 (3) (c).

The requirements for inventory include identification of critical habitat and the presence of listed species.

300(3)(c) para after (x)

To "biological" conditions: prior to "marine riparian vegetation" insert "location, condition, and species diversity of..." and add "salt marsh areas" to the list.

Under the list of "Altered Conditions" include "industrial outfalls" and "railroad tracks," "dredging," "bridges", "roads within shoreline jurisdiction." Add "riprap" as an example of shore hardening.

Ecology has revised the rule to address some of these suggestions, as follows:

1. Edits to "Natural conditions" list:

"Wetlands (associated and isolated), <u>including salt marsh areas"</u>

"<u>Location, condition, and species diversity of</u> marine riparian vegetation"

2. Edits to "Altered conditions" list:

"Industrial complexes, <u>outfalls,</u> and appurtenant structures"

"Filled <u>and dredged</u> areas"

"Roads<u>, railroad facilities, and bridges</u> within shoreline jurisdiction."

Note: The word "riprap" was not added, as it would be covered by the existing item "shoreline hardening."

300(3)(c) para after (x)

Add "fish" to "altered conditions: land use" in line item for "Tide gates ....".

In this context, the term "wildlife" would include fish.

300(3)(c) para after (x)

Add "floodplains" to "altered conditions: land use" in line item for "development within channel migration zones."

To the extent shoreline jurisdiction covers the floodplain, then all the listed land uses will be inventoried.

300(3)(c) para after (x)

The inclusion of a separate list of items which must be identified in any inventory involving PFC species is confusing. It makes no sense to create a dual track for jurisdictions with PFC species. This list should be applied to all jurisdictions. Under no circumstances can jurisdictions with T&E species be allowed to conduct incomplete inventories as the rule suggests in the sections referenced above.

The inventory requirements for T&E species are specific to conditions for these species. A more generalized inventory is appropriate where such species do not exist and do not associate.

300(3)(c) para after (x)

Add "large woody debris", "substrate (riverine)", "off-channel habitat", "riparian vegetation", and "temperature" to physical baseline conditions.

Ecology believes most of these items will already be identified as "Forage fish spawning and holding areas."

300(3)(c) para after (x)

Path B provides inadequate baseline inventories which would allow implementation to be blocked or impeded in some instances.

It is unclear why the list of items to inventory is inadequate or how it would block implementation.

300(3)(d) Analyze shoreline issues of concern

Change phrase "To support policies of the SMA…" to "To <u>implement</u> policies of the SMA…"

Ecology has revised the rule to address this comment. The rule now reads: "To ~~support~~ <u>implement</u> policies of the SMA…"

300(3)(d)(i)(C) Characterization

Last paragraph should be changed to: "Local governments shall use scientific and technical information and shall consult with department technical assistance materials and work with federal, state, and local resource agency teams and affected Indian tribes when analyzing ecological conditions and their implications for priority species survival."

Should be changed to: "This analysis shall be done for discrete reaches of shoreline segments of differing characteristics."

Should be changed to: "If a regional plan, such as a watershed plan and limiting habitat factors analysis, is ongoing or has been completed, then the master program shall conduct the characterization..."

Should is sufficiently directive in all theses cases. There may be other more appropriate methods.

300(3)(d)(i)(C)(I)

We are concerned about the heavy reliance on watershed plans and related limiting factors analysis. Many of these plans and analyses do not consider marine and estuarine environments. Puget Sound is not technically a part of any WRIA, and HB 2514, which authorized the creation of local watershed councils, excluded marine waters from consideration. Amend as follows: at the end of the first sentence, following "in the watershed plan", insert "provided such plans or analysis provide sufficient information to meet all the needs of this chapter, including characterization of marine resources if applicable."

The cited provision does not indicate that the watershed plan analysis is sufficient for SMP preparation; just that it should be incorporated into the SMP preparation analysis.

300(3)(d)(ii) Shoreline use analysis

In the second paragraph, at the end of the first sentence, following "harbor area statutes and regulations", insert "provided that they are consistent with the requirements of this chapter." Some of these regulations may be inconsistent with the SMA, in which case the SMA must override the regulations.

The intent of the requirement is to provide coordination. Development and uses in these areas must comply with both harbor area statutes and the SMA.

300(3)(d)(iii) Cumulative impact analysis

It is important that the cumulative impact analysis also recognize the concept of limiting factor. Recently, a wetland fill application was received within the city limits of Sweet Home, OR. The application argued that wetlands within urban areas served no function and that all wetland areas could therefore be eliminated. Include a section explaining that when non-water dependent residential, commercial and industrial projects cannot be accommodated in upland areas, then the limiting factor for such development has been reached and development needs to look for uplands in other jurisdictions.

The guidelines set specific use priorities for shoreline jurisdiction (see section 300(2)(d)). Specific requirements for upland uses other than those relevant to RCW 90.58.340 (see section 310(3)) is not appropriate.

300(3)(d)(iii)

Determining cumulative impacts is speculative and penalizes new development and redevelopment for the impacts of development that has already occurred. Under the ESA, an action does not result in "take" of a species simply because similar actions occurring earlier in time have gone unmitigated. In the ESA Section 7 consultation process, "speculative non-Federal actions" that may never be implemented are not factored into the "cumulative effects" analysis. In contrast, the cumulative impact analysis in the Guidelines requires local governments to speculate on a vast array of potential conditions, to the detriment of property owners and state taxpayers.

Path B requires mitigation for each and every project "[w]here projected cumulative impacts are found to adversely affect priority species populations." These "priority species populations" include far more than PTE species, including "species of recreational, commercial, and /or tribal importance." The cumulative impact analysis of local governments must include a staggering amount of species not previously considered, and will result in the prohibition or conditioning of every project in the shoreline jurisdiction.

The rule doesn't define standards because the science isn't there. For example, to what extent have the Chinook salmon been affected by the shorelines on the Columbia River? Nobody can answer that. Another example, what's the impact on the steelhead from a dock built on the Yakima River? These are things that aren't definable. And even cumulatively, I don't believe they are definable. And then how do we measure whether we have had some successes here? What about natural erosion versus erosion caused by dam's activities? Who's the master here that's going to define all of these things? And then of course tell us when we've achieved some kind of success, or if we are being successful.

Where projected cumulative impacts are found to adversely impact priority species, mitigation must be provided. The mitigation must be linked to the priority species, critical populations and associated habitats. Determination of the cumulative impacts must also include and address the established management objectives as stipulated in section WAC 173-26-300(2)(b).

The requirement for local governments to conduct a biological evaluation of the full build out condition allowed in the master program as part of the cumulative impacts assessment needs further clarification and definition. What exactly will be required in the evaluation in terms of technical background studies? For example, is hydraulic modeling needed to determine flow characteristics and erosion potential under build-out scenarios? How will each municipality's individual assessment be coordinated and integrated with its upstream and downstream neighbor? Most significantly, how will this requirement be integrated with on-going watershed salmon recovery plans in the Puget Sound region? These issues should be evaluated in more detail in an effort to look for efficiencies and economies in developing this extensive body of information and insuring there is a reasonable template for the evaluation that all jurisdictions will be using.

Ecology has revised the rule to clarify a number of concerns expressed in these comments. The rule now reads: "Where projected cumulative impacts are found to adversely affect ecological functions, adjust master program provisions to achieve the objectives stated in sections 300(2)(c), (d), and (e). Where projected cumulative impacts are found to adversely affect ~~priority~~ T&E species populations, master program provisions ~~or mitigation requirements shall be added for each development~~ adjusted so that there will be no cumulative significant ecological impacts ~~significantly affecting ecological functions~~ to PFC at full build-out."

Ecology believes that cumulative impacts assessment is crucial and is supported by state law (e.g. SMA, SEPA). Assessment of cumulative impacts can and should be much more than speculation on a vast array of potential conditions, as postulated by one commentor. It should be a reasoned assessment of potential future impacts.

One commentor requested clarification of the technical information that will be required in the cumulative effects analysis, and provided examples. That level of information will be contained in the guidance documents that will be prepared after the rule is adopted to assist local governments. Ecology will prepare the guidance materials in consultation with local governments.

300(3)(d)(iii)

Local governments must conduct a full build-out analysis to determine cumulative impacts of shoreline development. All future development must be conditioned to mitigate for such these speculative impacts. Property owners hoping to build on their land, change its use, or even replace or remodel and existing use will bear the burden of restoring shorelines used by the entire state.

The commentor expresses concern that future development will have to pay for restoring shorelines used by the entire state. The full build out analysis is a commonly used and legally valid tool for assessing the long-term cumulative impacts of a set of regulations. Ecology has revised the rule to clarify that the information should be used to set an appropriate level of allowed use such that "where projected cumulative impacts are found to adversely affect T&E species populations, master program provisions shall be adjusted so that there will be no cumulative significant ecological impacts to PFC at full build-out. "These adjustments will occur so that all future developments will be treated equally.

300(3)(d)(iii)

A Biological Assessment is to be prepared by the local governments to address cumulative impacts. What is the expectation of Ecology as to the level of involvement of WSF? What if "full build-out" is not known at the time of creation of the Master Program? Will WSF be consulted prior to submittal of the BA? How will we budget and schedule for this additional work? Where several topics are listed to include in the BA, is the control of exotic species limited to vegetation species?

Full build-out is assumed to be what the plan envisions. Full build out is based on development consistent with the plan of all areas in jurisdiction. The "exotic species" referenced in the biological evaluation requirement includes both plants and animals. State agencies will be expected to provide available information, where appropriate.

300(3)(d)(iii)

The full build-out analysis will require local governments to produce a comprehensive vacant land inventory. That will be no small task. The cumulative impacts requirement is expensive and of dubious value relative to restoring fish runs. For example Benton County shorelines are zoned 2.5 & 5 acre parcels, our CAO requires 100 ft structure setbacks, and riparian corridors must be left alone. Minor intrusion from piers and floats are allowed. What cumulative impacts would we analyze? If impacts were identified what causal relationship could we identify? Is it development or some other cause? The state agencies that regulate macro things (water quality, fish numbers, control floes, etc) should determine the health of the environment. The burden should not be placed on locals to determine the health of the environment.

A full build-out analysis of areas within shoreline jurisdiction, for both the existing SMP and any proposed change, is important for understanding how the

proposed changes to an SMP will affect shoreline areas. This analysis is not such an unusual task. Many cities and counties conduct such an analysis when preparing new, or significant changes to their comprehensive plans. Ecology believe the requirement to assess cumulative impacts is important to understanding the impacts of master program-level decisions. Cities and counties have the greatest familiarity with their region, and thus are the appropriate entities to undertake this effort. Ecology does appreciate that this will be a difficult task for some jurisdictions, and will be offering guidance in how to undertake that assessment. In addition, state agencies (Ecology and others) will help to the extent they can.

300(3)(d)(iii)

In addition to the cumulative impact projections listed in this section, require Ports to prepare port planning projections that incorporate regional port planning rather than port competition. Unfortunately, local government build-out projections for port areas are unlikely to account for the fact that port growth may be better handled by another port jurisdiction. Cumulative impact assessment of full build-out conditions should be required to assess the state-wide interest in avoiding speculative development that could be accommodated outside the local government's jurisdiction.

The comment that ports be required to prepare projections that incorporate regional port planning rather than port competition is beyond the scope and authority of the SMA guidelines to require. Planning for shoreline areas are coordinated between ports and the appropriate local government, with the local government responsible for complying with the SMA. The comment also asks that cumulative impact assessment of full build-out be required to assess the state-wide interest in avoiding speculative development that could be accommodated outside that local government's jurisdiction. Local governments are required to address whatever full-build-out would be for their proposal. Determining whether build-out would be "speculative" is very subjective and we do not believe this would add value to the guidelines.

300(3)(d)(iii)

More guidance is needed here and in Path A on how to comply with the need to mitigate for cumulative impacts. To avoid having the burden fall on new applicants to mitigate for past cumulative impacts, programmatic mitigation such as shoreline acquisition projects or enlargement of the Natural Environment designation should be considered.

Ecology will prepared a guidebook for local governments that will include information on implementing the proposed guidelines, including information on how to address cumulative impacts. Other state agencies will participate with local governments in the inventory work to the extent they are able and willing. Ecology also anticipates that local governments will consult with state agencies that are affected by any inventory work.

300(3)(d)(iii)

We approve of the requirement for local governments to consider cumulative effects. Many counties have ignored cumulative effects when approving development.

Comment noted.

300(3)(d)(iii)

Should be changed to: "This assessment shall include potential impacts due to all development, including current conditions and those uses not requiring a shoreline permit. Master programs shall address cumulative adverse impacts caused by incremental development..."

Should be changed to: "At a minimum, local governments, with the assistance of state agencies, shall project the ultimate allowed full build-Out..."

Ecology believes "should" is the appropriate reference so we respectfully decline these suggestions.

300(3)(d)(iii)

Change "forest and agricultural practices" to "impacts of forest and agricultural practices".

Ecology has revised the rule in response to this comment. The bulleted items now read: "

"Impacts of shoreline stabilization and impacts to the near-shore habitat and critical aquatic habitats."

"Impacts of forest and agricultural practices."

300(3)(d)(iii)

Change "Cumulative impact analysis shall incorporate scientific and technical information" to "Cumulative impact analysis shall be based on best available science."

Regarding the suggested change from "scientific and technical information" to Best Available Science", see response to comments made on 173-26-200(2)(a).

300(3)(d)(iv) S.S.S.

If the area contains substantial amounts of shorelines of state-wide significance Unclear or vague: what exactly is a "substantial amount"? This should be defined by quantity, such as feet of shorelines of statewide significance.

Ecology has edited the provision to clarify that all shorelines of statewide significance must be addressed. The text now reads: "If the area contains ~~substantial amounts of~~ shorelines of state-wide significance, undertake the steps outlined in WAC 173-26-350."

300(3)(d)(vi) Enforcement

Should be changed to: "In order to effectively administer and enforce master program provisions, local governments shall also review their current permit review and inspection practices..."

The interest addressed here is coordination with other programs administered by local government. Local governments are required to address enforcement of the SMP in the 173-26-300(2).

300(3)(d)(viii) Vegetation conservation

At end, add: "Identify alternatives available for vegetation management for public infrastructure facilities."

Ecology believes the suggested language is inappropriately specific for the general provisions of this section.

300(3)(d)(viii)

Vegetation conservation speaks only to upland vegetation. Add aquatic vegetation and require use of best available science.

The provisions of this section are general and are not limited to upland vegetation. Aquatic vegetation is specifically addressed in section 320(2)(c)(iii) & (iv).

300(3)(d)(viii)

Last paragraph: "In the master program environment designation provisions and boundaries, identify the areas where new structural shoreline stabilization measures are prohibited…"

This section is general in nature. Specific requirements for environment designation are contained in section 310.

300(3)(d)(ix) Restoration

Amend this section to make it clear that ecological restoration is not limited to recovery efforts for PTE species, but is a necessary goal to achieve a net-gain in ecological functions and values lost as a result of past shoreline development.

The provisions of this section specifically include priority species and habitats.

300(3)(d)(ix)

Ecological restoration of PTE species must also be based upon the management objectives for those species and critical populations. Replace "using scientific and technical information" with "best available science".

Regarding the suggested change from "scientific and technical information" to Best Available Science", see response to comments made on 173-26-200(2)(a).

300(3)(d)(x) Special area plans

Unclear or vague: The statement "complex shoreline ecological issues" needs definition or further clarification.

The statement "unique features" needs to be included in (WAC 173-26-020 Definitions) to prevent misunderstanding.

Ecology believes the language is sufficiently clear for the purpose. The terms are intended to be flexible to allow some judgement.

300(3)(d)(x)

Delete this section. To date the results under SAMP in the state of Washington has been a failure. An effort begun in Grays Harbor in the mid-70's took a decade and a half of effort and still was unable to resolve the major conflict between speculative Port expansion and natural resource protection. It took an act of Congress in 1988, to finally establish a National Wildlife Refuge to provide protection that the SAMP process was unwilling or unable to provide. Worse, when development interests were blocked from proceeding with projects contrary to the Grays Harbor Special Management Plan, they simple demanded that GHEMP be amended to accommodate their projects. An additional SAMP effort in Mill Creek in South King County is now entering its second decade without resolution. While Federal and state agency staff time has been eaten up by this process, little to no effort has gone on to monitor or stop individual projects from proceeding. It is clear that neither the public nor local or state agencies are equipped or funded to carry out future SAMP planning efforts. Finally, both the GHEMP and Mill Creek SAMP's conducted meetings at which the public was excluded. This is an additional reason that SAMPs have such poor track records with the pubic.

Ecology declines this suggestion, as SAMPs have been proven to be valuable tools for coordinated planning in a specific area.

300(3)(e) Establish env. designations

Prepare specific environment designation policies and regulations where necessary …" is unclear. The statement "where necessary" provides a loophole in this provision. It is necessary to explain when local governments need to prepare environmental designation policies and regulations.

Ecology has revised the rule to address this comment. The rule now reads: "Prepare specific environment designation policies and regulations ~~where necessary to address different shoreline conditions and objectives~~, including those necessary to maintain properly functioning condition for ~~PTE~~ T&E species.

300(3)(e)

At the end of the final sentence of the final paragraph at the bottom of page 105, we strongly urge you to delete the phrase "and those areas where shoreline stabilization may be appropriate because of the potential for property damage or the needs of water dependent uses." This phrase is in direct conflict with the entire section on shoreline stabilization (330(3) on p. 139). The phrase in 300(3)(e) above provides a blanket exemption would allow local jurisdictions to completely avoid the need for site specific analysis and geotechnical surveys which is the cornerstone of the shoreline stabilization section later in the rule. Since each site is different, it is not scientifically valid to designate zones where the requirements do not apply.

Moreover, neither the term "appropriate" nor "needs of water dependent uses" provide clear direction as to how this decision would be made. Under this "standard" a local decision-maker could justify almost any decision to exempt large sections of shoreline from shoreline stabilization requirements.

The cited sentence also calls for "identifying where shoreline stabilization is prohibited or restricted." The issue of shoreline stabilization should be examined in the environment designation process. Shoreline stabilization must conform to section 330(3)(a).

300(3)(h) Submit for review and approval

Amend this section to add the following: "LOCAL GOVERNMENTS SHALL HAVE COMPLIED WITH ALL PUBLIC PARTICIPATION REQUIREMENTS PRIOR TO FORMAL SUBMITTAL OF THEIR MASTER PROGRAM PROVISIONS TO THE DEPARTMENT."

Ecology respectfully declines this suggestion, because Part II of Chapter 173-26 WAC already contains this requirement.

310(2) Environment designations – Basic requirements

The use of the "rural conservancy" designation for areas that have not been inventoried and/or designated is not consistent with the precautionary principle that seeks to avoid damage to sensitive resources through adoption of the highest protection standards until it can be demonstrated that lower standards are adequate. It would be more appropriate for unmapped/undesignated shorelines to default to the "natural" designation, which would afford these areas the highest level of protection and provide an effective incentive for the timely collection of inventory data with which to better manage these areas

The intent is that all areas will be inventoried and designated. In those limited instances where that effort fails, the rural or urban conservancy designations are appropriate holding categories pending full review and designation.

310(2)

Should be changed to: "The map and the master program <u>shall</u> note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation..."

"Should" is appropriate as local government may choose to devise a different but comparable system.

310(2)

Missing key part of sentence: "Each master program's classification system shall be consistent with that described in WAC 173-2,6-310 (4) and (5) unless there is a compelling reason based on the act and this chapter, to the contrary and the alternative proposed provides equal or better

implementation of the act..." These words were included in Path A but mere missing from Path B.

Ecology has revised the rule to address this comment. The rule now reads: "Each master program's classification system shall be consistent with that described in WAC 173-26-310(4) and (5) unless there is a compelling reason, based on the act and this chapter, to the contrary and the alternative proposed provides equal or better implementation of the act, particularly with respect to protection of ~~PTE~~ T&E species.

310(2)

The map should clearly illustrate what environment designations apply to all lands … including … wetlands. Add: PTE habitat and 'vulnerable congregations' shall also be illustrated.

The items would appropriately be part of the inventory, not the environment designation maps.

310(3)(a) Provisions not precluding one another

Should be changed to; "1n this case, the comprehensive plan shall make specific provisions for resolving any apparent inconsistency. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations shall not conflict in a manner that all viable uses of the property are precluded."

The draft Guidelines imply that the restriction of development from 200 feet landward of the ordinary high water mark is equivalent to creating a passive park and trail system within the same 200 feet area of a "natural environment". We disagree and argue that allowing parks and trails within 200 feet within any shorelines will create an adverse impact to properly functioning conditions.

The guidelines cannot direct a community with regard to the overall comprehensive plan of a community. The guidelines can only establish policy guidance for the shoreline areas and the SMP component of the comprehensive plan. Therefore the term should is appropriate in this section as it is advisory to local government in this context. The implication in this comment is derived from an example which is not policy but Ecology would note that provision of public access to the shorelines is an important policy element of the SMA and that passive parks and trails are permitted uses in the "Natural" shoreline environment.

310(3)(b) Use compatiblity

Should be changed to: "Land use policies and regulations shall protect preferred shoreline uses from being impacted by incompatible uses AND BY USES THAT CAN BE LOCATED IN UPLANDS OUTSIDE SHORELINE AREAS."

Should be changed to: "For example, new residential development shall not be allowed near heavy shoreline industrial areas..."

Ecology believes "should" is the appropriate reference so we respectfully decline these suggestions.

310(3)(c) Sufficient infrastructure

Ecology stresses that utility services not be a sole justification for more intense development. Does Ecology agree that shoreline designation should not preclude intended development?

Environment designations should be coordinated with other development regulations and should not preclude planned development that is consistent with the environment designation.

310(4) Recommended environment designation classifications

This section creates an opportunity for local governments to use alternatives to the 6 environment designations described in this rule. Since the vegetation management standards [section 320(5)] as well as standards for development established under this section (section 310) are keyed to the six environments, we are concerned that alternative environments will be without standards. This is simply unacceptable. We therefor urge you to make the following changes. At the end of the introductory language in 310(4), prior to 310(4)(a) "Natural environment", insert the following paragraph:

"Should local governments choose to adopt or maintain different subdesignations or "parallel environments," they must also classify all shorelines within their jurisdiction as one of the six environments identified in this rule. Regardless of whether alternative environments are used, all development must comply with the standards established in this chapter for those six environments, including WAC 173-26-310 and WAC 173-26-320(5). These standards are minimum standards, alternative environments may be more protective of the shoreline resource if a local government so desires." Without this language, many shorelines could be without standards for new development.

Require jurisdictions that designate alternative environments to specify equivalency of those environments to DOE's standard environments.

The rule allows for a jurisdiction to use alternative environmental designations other than those specified. Unfortunately, as the rule is written, there are no written standards for vegetation management and development that would apply to those areas. This loophole needs to be fixed in the next version of the rule.

We support the new shoreline designations for more flexibility but we cannot endorse flexibility to the point of allowing local designations as a substitute.

Ecology agrees that it must be clear that alternative environments must also contain implementing standards. The final rule reads: "The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic." Local governments shall assign all shoreline areas an environment designation consistent with WAC 173-26-310(4) and (5). For the purposes of sections 310(4) and (5), a proposed master program environment designation system is consistent with recommended designations if a given shoreline segment with the characteristics described in one of sections 310(5)(a) through (f) is assigned an environment designation with purpose, management policies, and standards to implement those policies consistent with the corresponding environment designation in sections 310(4)(a) through (f). For example, shoreline areas meeting the criteria in 310(5)(d) should be assigned an environment designation with purpose and management policies of the "high-intensity" environment.

Local governments may establish different ~~sub~~designations, provided they are consistent with this chapter."

Comparable language has been added to Path A [Section 210(4)]. This flexibility allows local governments the means to write master programs that can more fairly and effectively deal with local, and often unique, situations.

310(4)

1st para.: We are opposed to changing environmental designations from the previous Urban, Rural, Conservancy and Natural environments provided for under

the existing guidelines. The reason for keeping the existing environmental designations is so that inventory and baseline monitoring can be carried out. For example, if large sections of shorelines are changed from Rural to Shoreline Residential it becomes extremely difficult to track over time the changes that have taken place to rural shorelines areas.

Local governments have adopted a wide variety of environment designations and standards under the system established by Chapter 173-16 WAC over the past thirty years. The environment designation standards in Section 310 also provide flexibility. The system is intended to more accurately reflect land use patterns, to be consistent with GMA, and to carry out the policy of the SMA. Ecology believes a more accurate means of tracking changes over time would be based on inventory of actual use and characteristics, rather than comparison of environment designations.

310(4)

The low standards of the natural, urban conservancy, and high intensity environments show that the focus is on restoration and mitigation not prevention of impacts.

Ecology believes the standards are both adequate and consistent with the requirements of the Shoreline Management Act. The definition of "mitigation" requires avoidance of impacts as the preferred mitigation method.

310(4)

End of first paragraph: "Where parallel environments occur, development in one must not preclude the maintenance or restoration of ecological functions or properly functioning condition for PTE species." WSF has no authority to proceed with the maintenance or restoration of ecological functions on property other than that which it owns or leases.

The use of parallel environments is on a planning level. Ecology understands that permit conditions related to individual projects must respect property ownership and authority.

310(4)

This section establishes environmental designations, permitted uses, and development standards. Assuming that existing public transportation facilities are located throughout all environmental designations, we would recommend that the maintenance and preservation of these systems be identified as an allowed or permitted use within all designations and that development standards do not create a hardship for WSDOT to effectively fulfill it's mandate to maintain a safe transportation system.

It would be inconsistent with the policy of the guidelines to identify universal allowed or permitted uses. Existing and ongoing uses should be accommodated by SMP provisions.

310(4)(a)(i) Natural environment - Purpose

Path B allows for decreased protection of shoreline areas: In comparing the Path A and Path B purpose statements for the natural environment (WAC 173-26-210(4)(a)(i) (page 38) and WAC 173-26-310(4)(a)(i) (page 111)), it appears that Path B includes less area in the natural environment than Path A. Since the natural environment provides for the highest level of protection of natural features, fewer locations would be afforded this level of protection under Path B than under Path A. Path A identifies areas "that include important shoreline functions intolerant of human use," whereas Path B identifies areas "with intact or minimally degraded shoreline functions intolerant of human use."

Ecology has revised the rule to address this comment. The rule now reads: "The purpose of the "natural" environment is to ~~preserve and enhance~~ protect and restore those shoreline areas that are relatively free of human influence or ~~with~~ that include intact or minimally degraded shoreline functions intolerant of human use. These systems require restrictions on the intensities and types of uses permitted to maintain the ecological functions and ecosystem-wide processes."

310(4)(a)(ii) Natural environment – Management policies

Forestry and residential uses should not be permissible in Natural designations. This should be the most restrictive of all environment designations and logically should maintain natural ecological functions to the highest degree possible. Commercial forestry and residential development will not "result in a greater level of ecological functions" or PFC. Only ecosystem restoration, preservation or enhancement will do that. As written, the Natural designation nearly duplicates the Rural conservancy designation in merely discouraging development that "substantially degrades" ecological functions or natural character. The language could be easily misinterpreted to mean that the only practical difference is the conditional use permit. Development or logging activity in a Natural designation would only need to jump through an extra hoop, and is otherwise considered acceptable activity when, in fact, it should be actively discouraged from these most sensitive areas.

The standards for less intensive uses (i.e. scientific and cultural) in (D) are greater than they are for limited development and commercial forestry.

Limiting development in "natural" environments to only that which increases ecological functions and PFC will eliminate a good share of Puget sound and the Olympic peninsula. Another stupid idea dreamed up by city dwelling people.

In the past the Natural environment typically allowed no such uses and also typically was applied to only very small areas of private land if any at all. The goal of allowing limited development in the "natural" designation is to encourage local governments to designate more areas as "natural" in their SMPs. The overall master program will be more protective if more areas are so designated. However, reasonable use must be allowed if important natural areas on private land are to be protected by a natural designation. The conditional use provisions assure that each such use will be evaluated individually for impacts to shoreline resources and consistency with the environment designation.

The standards for limited development and forestry are greater because the CUP requires consistency with the purpose of the environment designation.

310(4)(a)(ii)

Under "natural" environment where riparian stands on those or nearby parcels are potentially affected by windthrow, adaptive management provisions should be implemented to provide windthrow buffers to protect future recruitment through incentives to landowners.

Vegetation management provisions are contained in Section 320(5).

310(4)(b)(i) "Rural conservancy" environment

Missing important word(s): "Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, low intensity aquaculture, low-intensity residential development consistent with the local comprehensive plan's

rural element..." These words were included in Path A but were missing from B.

Ecology has revised the rule to address this comment. The final rule reads: "The purpose of the "rural conservancy" environment is to protect, conserve, and ~~enhance~~ restore ecological functions, existing natural resources, and valuable historic and cultural areas in order to achieve ecological protection, sustain resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, ~~low-intensity~~ aquaculture, low-intensity residential development consistent with the local comprehensive plan's rural element and chapter 36.70A RCW, and other related low-intensity uses."

310(4)(b)(ii)

Public access provisions are highly relevant but lacking under the Rural conservancy designation. For example, public trails along river corridors may be appropriate in some areas, especially where flood control facilities (e.g. dikes) are subsidized by public money, or other activities are already, or may in the future, adversely impact public resources.

Ecology believes this issue is adequately addressed in (ii)(A), which says that: "Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant ecological impacts to the shoreline are avoided or mitigated."

310(4)(b)(ii)

Ecology must concede that there are existing and planned future transportation and utility corridors that have and will utilize portions of the shoreline environment designated as "rural conservancy". These linear features, whether existing or proposed in the future, provide essential elements of modern life, heat and light. Utility facilities and must be accommodated within these regulations. Therefore it is imperative that a Management policy be written in this section to acknowledge the critical role of utilities in modern life and address the fact that they can co-exist in nature without causing substantial degradation to "properly functioning conditions". The same Management policy needs to be written for the "High-intensity" and "Urban conservancy" environments. These statements should be similar to the description in the "Shoreline residential" environment.

Major utility and transportation corridors have significant long term adverse impacts on shoreline resources and in those environments that are intended to preserve the existing character of the area, are not a preferred use. The regulations overall recognize that such linear facilities exist and must pass through the shoreline in order to function, however the intent of the regulations is clearly to discourage use of the shoreline as the location of such facilities and where they must cross, to minimize the impacts. Service facilities for allowed development are part of the development.

310(4)(b)(ii)(A)

Should be changed to: "Uses in the "rural conservancy" environment shall be limited to those which are nonconsumptive..."

Ecology believes the term "should" provides a necessary degree of flexibility.

310(4)(b)(ii)(B)

WSF needs clarification on this language as it relates to ferry operations, such as larger boats or increased physical capacity at a busy ferry terminal.

Ecology would not consider ferry terminals to be a typical use in the rural conservancy environment. To the extent they may be so designated, specific SMP provisions would need to address the issue.

310(4)(b)(ii)(C)

Recommended changes: "Construction of new structural shoreline stabilization and flood control works shall not be allowed except where there is a documented and imminent need to protect an existing and necessary public structure or ecological functions, softer stabilization methods have been implemented and have been determined by an approved, licensed geologist to have failed and mitigation is applied, consistent with WAC 173-26-330. New development shall be designed and located to preclude the need for such work."

The proposed revision would essentially prohibit the protection of private structures even where there is a demonstrated danger to the structure. This is unnecessarily broad and contrary to the policy of the SMA. The provisions of 173-26-330(3)(a) assure that ecological functions will be protected whether the use is public or private.

310(4)(b)(ii)(D)

The proposed 10% impervious surface limit is impractical and would preclude otherwise efficient allowable land uses. What is the scientific basis for this percentage?

The 10% impervious surface limit is derived from scientific studies indicating a threshold of impact to shoreline resources. The rule specifically allows local governments to develop an alternative standard, provided it is "based on scientific information that meets the provisions of this chapter and protects shoreline ecological functions and properly functioning condition."

310(4)(b)(ii)(D)

Should be changed to: "If existing development does not conform to rural element provisions, then the master program shall address nonconforming uses in ways that restore ecological functions over time." Delete word: strike significant from the second sentence: "residential development standards shall prevent significant cumulative adverse impacts..." For effective salmon recovery, there shall be no further adverse impacts from development. People can build in a manner or in a location that prevents impacts, salmon have no place else to live but the river and the near shore habitat.

The standard provided, together with other applicable provisions, are sufficient to assure protection of shoreline ecological functions, including salmon habitat.

310(4)(c) "Aquatic" environment

Under both Path A and Path B, private docks are prohibited in the "aquatic environment" (areas waterward of the ordinary high water mark). "New over-water structures should be allowed only for water-dependent uses, public access, or ecological restoration." Response: Private docks would not be prohibited if they are built to support water-dependent uses, such as boating or swimming.

Given that the entire shoreline is a potential PFC, and that SFR's are not water dependent nor a traditional form of providing public access, can an SFR have a new dock? Island County will not support revised shoreline guidelines that do not allow property owners the opportunity to at least present the concept of a dock if it can be properly mitigated or proven to have no impact on PFC.

Private docks would not be prohibited if they are built to support a

water dependent use such as boating or swimming.

310(4)(c)

Delete word: strike significant from the second sentence: "residential development standards shall prevent sigaif3eaW cumulative adverse impacts..." For effective salmon recovery, there shall be no further adverse impacts from development. People can build in a manner or in a location that prevents impacts, salmon have no place else to live but the river and the near shore habitat.

The standard provided, together with other applicable provisions are sufficient to assure protection of shoreline ecological values including salmon habitat.

310(4)(c)(ii)

Over-water structures should not be allowed for public access unless they meet specific criteria such as that they are to show-case natural features and resources consistent with wise stewardship and protection of unique characteristics. Change: section B .. only for uses that are water-dependent and/or provide public access that are a show-case for natural features and resources consistent with wise stewardship, and protection of unique characteristics and maintaining and restoring PFC for PTE species.

Increased public access is a fundamental purpose of the SMA and it is not limited to interpretive facilities.

310(4)(c)(ii)

Please add the following to the Management Policies: "Non-native aquaculture is not a preferred use in the Aquatic Environment."

Aquaculture is a preferred use. There is no basis in the SMA for restricting the use to native species. The issue is addressed by regulations of the department of fish and wildlife.

310(4)(c)(ii)(C)

Should be changed to: "The size of over-water structures shall be limited to the minimum necessary to support the structure's intended use."

Should be changed to: "In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use over-water facilities shall be encouraged."

All developments and uses on navigable waters or their beds should be located and designed to minimize interference... Should be changed to: "All developments and uses on navigable waters or their beds shall be located and designed to minimize interference..."

The use of should is reasonable in this provision as it allows consideration of exceptions that are consistent with the overall purposes of the SMA and the guidelines.

310(4)(c)(ii)(E)

In the Aquatic environment, use and development should "minimize" (not "consider") impacts to public views.

Consideration of impacts to public views is a sufficient standard in this case. A requirement to minimize impacts to views in all cases could thwart public interests including safety and the functionality of the use.

310(4)(d)(i) "High-intensity" environment

The High-Intensity environment focuses too much on restoration and mitigation rather than on prevention and must include clear standards for retaining and preserving existing native vegetation. What little functioning habitat remains in urban areas can be of significant ecological value and should be protected where it remains.

Avoidance of impacts should remain the highest priority in this environment.

Should be changed to: "The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial and industrial uses, while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded. Also, the high-intensity environment is designed to ensure optimum use of shorelines that are industrial or commercial in nature."

"Transportation" should be included in the list of high-intensity water-oriented uses provided for in this section.

Ecology has revised the Purpose section to address these comments as follows: "The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded. ~~Also, the high-intensity environment is designed to ensure use of shorelines that are industrial or commercial in nature while preserving existing ecological functions and restoring ecological functions in areas that have been previously degraded."~~

310(4)(d)(i)

The High-intensity environment needs a different name. It implies that anything goes, or that shore resources are less worthy of protection in such areas. The name should incorporate the other half of the designation's intent which is to minimize further degradation and restore ecological functions. Perhaps something like High-intensity/restoration would transmit a better message.

Ecology respectfully declines this suggestion, as a name change would not affect the purpose.

310(4)(d)(ii)

Full utilization of existing urban industrial and commercial areas for some types of uses is not necessarily beneficial to shoreline water quality and habitat. Development outside the shoreline jurisdictional area under new protective regulations may be more ecologically sound. "Long range projections of regional need" will tend to be over-estimated by jurisdictions that historically profited from high- intensity shoreline uses and now readily pursue "redevelopment of underused areas." "Underused" areas can be adapted to alternative beneficial uses (Seattle's Gasworks Park). The term rehabilitation or redevelopment should be used more often as is done in paragraph. (e)(ii)(A). Suggest change: Redevelopment of underused areas should concentrate high-intensity use outside the shoreline portion of the underused area to the maximum extent compatible with water-dependent use.

In Section (A), the management policies emphasize maximizing development. Water dependent uses, in particular, are only required to mitigate "significant" impacts to ecological functions. This sounds a lot like business as usual.

In section (B), we are concerned about the emphasis on encouraging density in existing "urban areas." Many of these urban areas contain shorelines with natural characteristics. We should not be encouraging density in these areas. We would suggest that you insert the phrase "already degraded" after "utilization of existing".

Management policy (B) states that "Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed**, provided that as development occurs, ecological functions are maintained or restored** *(emphasis added*)." The broad concept that SMPs should contain sprawl by concentrating development in areas already developed is consistent with GMA and the SMA.

310(4)(d)(ii)(A)

This subsection states that "If an analysis of water-dependent use needs as described in WAC 173-26-300(3)(d) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established." We do not find that such an analysis is specifically called for in WAC 173-26-300(3)(d). If subsection (ii) is intended then it should be referenced. In any event, it is completely contrary to the goals and policies of the SMA to suggest that if a local government has no need for additional water-dependent uses that shoreline areas can then be turned over to nonwater-dependent uses. Rather, such areas should be kept in their current condition and evaluated for restoration opportunities.

The reference to subsection (ii) is correct. Section A states that "If an analysis of water-dependent use needs as described in WAC 173-26-300(3)(d) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a **mix of water-dependent and nonwater-dependent uses** may be established *(emphasis added*)."

310(4)(d)(ii)(A)

Delete the use of the term "water-related" from subsection (ii) (A).

The policy of the SMA, as established in 90.58.020, is not so specific as to require that only water dependent uses should be allowed. The provisions for water-related and water-enjoyment uses, as well as water dependent uses, is consistent with interpretation of the SMA since its inception. The term "water-related" is a part of shoreline jurisprudence and was developed by the Shorelines Hearings Board and the courts as part of judicial interpretations of the SMA.

310(4)(d)(ii)(A)

Last Sentence: If those shoreline areas also provide functions essential to ecosystem viability ensure that allowed uses protect undiminished functions by concentrating use outside riparian corridors.

The section addresses water-dependent uses. Ecology has revised the rule to read: "If an analysis of water-dependent use needs as described in WAC 173-26-300(3)(d) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, particularly properly functioning condition for ~~PTE~~ T&E species, apply ~~use~~ standards ~~as described in WAC 173-26-340~~ to prevent significant ecological impacts to those functions."

310(4)(d)(ii)(B)

Should be changed to: "Full utilization of existing urban areas shall be achieved before further expansion of intensive development is allowed..."

Ecology believes use of the term "should" is appropriate in this case. This flexibility will allow local governments to identify portions of urban areas for restoration.

310(4)(d)(ii)(C)

While we appreciate the need to emphasize restoration of these areas, as you have in (C), we are concerned that there is not a similar emphasis on prevention.

Ecology has revised the rule to address this comment. The rule now reads: "New development should protect and restore shoreline ecological functions, with particular emphasis on the attainment of properly functioning condition for ~~PTE~~ T&E species."

310(4)(e) "Urban conservancy" environment

These standards allow for degradation of critical vegetation and other resources. Rather than protection, the proposal focuses on restoration and mitigation. What little functioning habitat remains in urban areas can be of significant ecological value and should be protected where it remains.

The Urban Conservancy environment focuses too much on restoration and mitigation rather than on prevention and must include clear standards for retaining and preserving existing native vegetation.

Should be changed to: "Shoreline restoration and public access shall be required of all nonwater-dependent development on previously developed shorelines." It is unclear what is meant by "efforts shall be taken" to restore PFC. Again we would prefer a heavier emphasis on prevention of harm as opposed to simply restoration and mitigation efforts.

The purpose of the section adequately address the goal of protection. The rule reads: "The purpose of the "urban conservancy" environment is to **protect and** restore ecological functions, including properly functioning condition for T&E species and ecological functions in urban and developed settings, while allowing a variety of water-oriented uses *(emphasis added*)."

310(4)(e)(ii)(B)

Reference new development.

Ecology has revised the rule to address this comment. The rule now reads: "Standards shall be established for shoreline stabilization measures, vegetation conservation as described in WAC 173-26-320(5), water quality, and shoreline modifications within the "urban conservancy" designation to ensure that new development maintains and contributes to the restoration of ecological functions and properly functioning condition for ~~PTE~~ T&E species."

310(4)(f) "Shoreline residential" environment

Ecology claims that the purpose of this new environment is to accommodate residential development in those instances where consistent with protection and restoration of ecological functions and PFC for PTE species. Ecology should emphasize that RCW 90.58.020 contemplates alterations of the natural condition of the shorelines of the state in only "limited instances" and then only for "single-family residences." Washington State has hundreds of thousands of acres of land available for single family residences in upland areas. Shoreline residential development should be discouraged.

We are opposed to the establishment of this new environmental designation. We are strongly opposed to expanding the purpose to include residential development as opposed to the single-family residences limitation set out in RCW 90.58.020.

Emphasize that only single family residences should be permitted and only in those shoreline areas where adequate setbacks or buffers are possible to protect ecological functions, where there are adequate water and sewage disposal systems, and where the environment can support the proposed use in a manner which protects or enhances the ecological functions.

We do not support allowing local governments to establish multiple "shoreline residential" environments which is just another version of spot zoning. We are strongly opposed to allowing local governments to designate a "Shoreline residential" environments to promote "master planned resorts" or "multifamily and multilot residential and recreational developments" since these are specifically NOT listed as priorities in shoreline areas.

Please delete this subsection as well as the "Shoreline Residential" environment.

Shoreline residential development may be appropriate in some areas especially where conditioned with shoreline restoration and public access. The guidelines do give lowest use priority to multifamily residences. See section 300(2)(d)(v), which states that local governments should "Limit nonwater-oriented uses to those locations where either water-oriented uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act."

Multiple shoreline residential designations is not spot zoning any more than multiple residential land use zones are spot zoning. Multiple family residential is not a priority use [see section 300(2)(d)(v)]. However, such development may occur.

310(4)(f)(ii)

Section on public access should include the phrase after both (D) and (E) .... substantial public access, to meet the identified current and future access needs, and account for opportunities in the future.

Ecology believes the standard provided is adequate. Full standards for public access are contained in 173-26-320(4).

310(4)(f)(ii)

The purpose statement implies that it is not possible to say "no" to residential development. Local governments should be able to deny residential development if it is inappropriate and does not meet the intent of the act.

The intent of the Shoreline Residential environment designation is to accommodate residential development, however when a proposal is inconsistent with the applicable policies and regulations it must be denied.

310(4)(f)(ii)(A)

Missing a key phrase: "adequate access, water, sewage disposal, and utilities systems, and public services available..." These words were included in Path A but were missing from Path B. Should be changed to: "Developments shall be permitted only in chose shoreline areas where adequate setbacks or buffers are possible to protect ecological functions, and where there is adequate access, water, sewage disposal systems, utilities systems, and public services available and where the environment can support the proposed use in a manner which protects or enhances the ecological functions."

Ecology has revised the rule to address this comment. The rule now reads: "Developments should be permitted only in those shoreline areas where adequate setbacks or buffers are possible to protect ecological functions, where there are adequate access, water, ~~and~~ sewage disposal, and utilities systems and public services available, and where the environment can support the proposed use in a manner which protects or ~~enhances~~ restores the ecological functions."

310(4)(f)(ii)(A)

We support standards established under the "residential" environment, particularly in (f)(ii)(A) and (C). We believe that the requirements established here should apply to other environments.

Most other environments contain similar use provisions. Those contained in the "shoreline residential" environment are more specific to residential uses.

310(4)(f)(ii)(A)

Make it clear that wetlands are not an appropriate place for single-family residences and that the siting of such a residence in a wetland area will not be allowed.

The requirements apply to all shoreline areas, including wetlands.

310(4)(f)(ii)(B)

The management policies reference minimum frontage standards. What does this refer to? This section should be more explicit. The discussion about establishing two or more environments of different densities should be more carefully conditioned. As worded, it just opens the door and appears to encourage different designations than those recommended. Tighten and condition the language as proposed. As worded, it is not possible to say "no".

Emphasize that densities and minimum frontage width standards FOR SINGLE-FAMILY RESIDENCES shall be set to protect the shoreline ecological functions.

Frontage refers to the length of shoreline for each lot. The language is intended to protect ecological functions. The flexibility allows local governments to craft provisions appropriate to their setting.

310(4)(f)(ii)(E)

"Access, utilities, and public services are uses allowable outright and should be available and adequate to serve existing needs ..."

This proposed change would be out of context and inconsistent with the policy and provisions of the SMA.

310(4)(f)(ii)(F)

Should be changed to: "Commercial development shall be limited to water-oriented uses."

Ecology believes "shall" would be too restrictive, as there may be legitimate exceptions.

310(4)(f)(ii)(F)

What is the intent of section F referring to commercial development limited to water-oriented uses in this section on residential use? We oppose Ecology's efforts to expand commercial development to cover non-water dependent uses. Please clarify when discussing commercial development elsewhere that only water-dependent uses may be considered.

While the environment designation is primarily oriented to residential use, some commercial uses may be appropriate, and it is intended that they be limited to water-dependent uses.

310(5)(a) "Natural" environment criteria

Local governments are encouraged to designate parallel environments as `natural' in order to achieve a higher level of protection for PTE species. How is the provision of parallel environments to be matched with the vegetation conservation standards of section 173-26-320(5)(d)? We question the wisdom of this approach for areas where planned development will infringe on as-yet undisturbed riparian forest. The use of parallel environments is inconsistent with the goal of maintaining and restoring PFCs where the area under the "natural" designation is not of sufficient width or quality to guarantee critical functions and processes for at-risk species (e.g. shading, LWD and litterfall recruitment from riparian areas).

There is abundant scientific literature that indicates that fully protected vegetation management zones, as provided under I73-26-320(5), may not be adequate to guarantee "the full suite of vegetation-related shoreline functions"; thus, to further undermine the adequacy of such standards with recommendations for parallel environment designations is not warranted.

The parallel environments discussed in the last paragraph should have minimum described width (e.g. one SPTH). A grass lined bank between a road and a river that is

25 feet wide does not represent a natural shoreline.

☒ The use of parallel environments must be consistent with the goal of maintaining and restoring PFCs to be found consistent with this chapter. Ecology believes it is an appropriate option for local governments in certain circumstances.

310(5)(a)

Because of the preponderance of site-specific concerns, resources, or sensitive habitats along our shorelines (e.g. marshes, nest sites or nesting colonies, rare plant communities, pocket beaches; migration corridors, etc.), it may be useful to establish two classes of Natural, one of which is intended to protect the most sensitive areas from any development or alteration whatsoever, and another that accommodates limited "scientific, historical, cultural, educational, and low-intensity recreational purposes." The more restrictive designation could be applied to sensitive sites that may or may not have been inventoried. To accomplish this, certain shore features or conditions could, by definition, be relegated to the more restrictive Natural designation and mapped as they are discovered. Some of this could be added to the designation criteria.

☒ Local governments have the option of establishing more than one Natural environment, if it is appropriate for their circumstances.

310(5)(a)

Please add a special emphasis that islands are a unique and critical ecosystem deserving of special consideration for natural designation.

Add this language to the Natural Environment sections: "Ocean dunes that at the time of the adoption of these regulations have not been developed or built upon shall be designates as a natural environment."

☒ Ecology believes that all unique and critical areas will meet the criteria.

310(5)(b) "Rural conservancy" environment criteria

The criteria listed in Path B are similar to that listed in Path A. However, Path A allows for a provision addressing mining. This has been removed from the language in Path B. Therefore, mining would need to acquire an alternative shoreline environment designation. Without this designation, mining may not be allowed in the rural conservancy environment.

The current draft for "Path A" appropriately allows local jurisdictions to create an alternative shoreline designation, or a sub-designation, for commercially-significant mineral lands that are located along shorelines and outside incorporated municipalities and urban growth areas. This same provision does not appear in the "Path B" Guidelines. Ecological and environmental concerns do not justify the absence of the provision in Path B; under both Paths A and B, all shoreline mining operations must comply with rigorous standards set forth in the draft guidelines' shoreline use provisions (WAC 173-26-240(3)(h) and WAC 173-26-340(3)(h)). With these protections in place, there is no logical reason that Path B should not mirror Path A and allow local jurisdictions to develop an alternative shoreline designation that allows mining uses where mineral lands are typically located-outside urban or intensively developed areas.

☒ Ecology added a new paragraph to this section to address this comment. The rule reads: "Lands designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365.190.070 may be assigned a subdesignation of "rural conservancy" environment that allows mineral extraction, provided the provisions for that designation conform to WAC 173-26-340(3)(h) and this chapter and protect ecological functions."

310(5)(c) "Aquatic" criteria

The "aquatic" environment should apply to all wetlands, and not be applied at the discretion of local governments. In addition, the aquatic environment should encompass the full extent of the channel migration zone to ensure the highest level of protection for this well-documented, critically important habitat.

☒ Ecology believes it is appropriate to leave it up to local government discretion as to whether or not wetlands are assigned an aquatic designation. All wetlands within shoreline jurisdiction are required to be protected under Section 220(2)(c)(i).

310(5)(d) "High-intensity" criteria

Strike everything after 36.70A.70. Some of us have commercial or industrial property with no water dependent or water related uses.

☒ As currently proposed the "High Intensity" environment designation criteria does not prohibit non-water-dependent and non-water-related industrial or commercial development. Non-water-oriented uses may be allowed as stated in 173-26-210(4)(d)(ii).

310(5)(d)

We are concerned about language that would allow local governments to designate areas that "are suitable and planned for" high intensity development. This leaves the door open for almost any area, including one with natural characteristics, being classified "high intensity". We would suggest adding the following language following the last sentence in (5)(d): "An area is `suitable' for high intensity development if it has been degraded or has little value in terms of providing ecological functions."

☒ Ecology believes areas where this designation would be applied are appropriately limited. Even in the high-intensity environment, other protective provisions of the guidelines will apply.

310(5)(d)

Add transportation to the list of water-dependent uses.

☒ Ecology has revised the rule to address this comment. The final rule reads: "Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070, if they currently support or are suitable and planned for high-intensity water-dependent uses related to commerce, transportation, or navigation."

310(5)(e) "Urban conservancy" criteria

The criteria for establishing "urban conservancy" areas is not at all clear. We really do not have a clear picture of where these areas would be or what their purpose is.

☒ Ecology has revised the rule to clarify the intent. The final rule reads: "Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that are ~~less~~ not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "rural areas of more intense development"…"

320(2)(a) Critical areas - Applicability

The rule should be changed so that all critical areas not just GMA designated will be protected.

We object to language which would seem to limit the protections offered in this section to those areas which local governments have

designated as "critical areas" under GMA. Recent CTED reviews of local critical area ordinances have shown that most of these local designations have not adequately protected the resources at risk. In 320(2)(a) the application of this section is limited to all critical areas "as defined by 36.70(A) RCW that lie within shoreline jurisdiction." The section goes on to reference WAC 365-190-080, the very permissive state regulations on how GMA critical areas should be designated. While not entirely clear, this would seem to indicate that, if a local jurisdiction has not designated an eelgrass bed or similar resource listed in 36.70 as a "critical area," then this section does not apply.

If this approach is not your intent, then we urge you to clarify this. We are particularly concerned about the fact that most local governments have not included protection for marine aquatic vegetation in their critical area ordinances. Aside from this section of the rule, there are no provisions for aquatic vegetation. For these reasons, if nothing else, we urge you to make 320(2)(iii) (critical saltwater habitat) a separate section that is not linked to GMA critical areas designations.

We request that Ecology expand its concept of critical areas beyond those defined by the GMA in RCW 36.70A. Ecology is not limited or required to use only the GMA critical area definition. For example, parks and open spaces should also be considered critical areas. All islands in Washington State should be considered critical areas. Please add these to the list and encourage local governments to designate additional shoreline areas as critical areas, as needed.

The Governor's Fuel Accident Prevention and Response Team called on state agencies to develop "data and establishment of special standards applicable to existing and proposed pipelines for protection of environmentally sensitive areas and population centers." This recommendation could be partially carried out by amending Section -320 (2)(a), Critical Areas. However, Ecology should make clear that the designation of critical areas goes beyond those defined by the Growth Management Act, RCW 36.70(A). The following should be added to the Principles list of Section (2)(b): (viii) Ensure that hazardous liquid pipelines and natural gas pipelines are prohibited in critical areas within the shorelines of the state.

The rule can only apply to lands within SMA jurisdiction as established in 90.58.030. To some degree areas that fall under this jurisdiction overlap with designated critical areas under GMA. The section on "critical areas" gives local governments guidance on how to manage shorelines within "all critical areas, as defined by 36.70A.030 RCW that lie within shoreline jurisdiction."

The point of incorporating critical areas is to assure consistency between SMA and GMA regulations. The entirety of shoreline jurisdiction is subject to special management provisions above and beyond that applicable to other lands. Local government has broad latitude to give special attention, within the overall SMA framework, to unique or special areas in their shorelines.

To our knowledge, no special standards applicable to existing and proposed pipelines for protection of environmentally sensitive areas and population centers have been developed at this time. It would be inappropriate to include provisions that may or may not be consistent with developing standards.

320(2)(b) Critical areas - Principles

While it is helpful to require local governments to designate critical areas, it does little good if the State of Washington does not recognize and act on them. Therefore, please add the following principle to this list: (vii) The State of Washington commits to withholding any state funds from any state program that would adversely impact any critical area established under this section. This provision provides some assurances that by designating a critical area, the State is also committing itself to refrain from state funding for projects that would have an adverse impact on such areas.

This suggestion is beyond the authority granted by the SMA.

320(2)(b)(ii)

In designated critical areas, use of best available science is required under the Growth Management Act and needs to be required in SMPs as well. This section loosely describes the process to follow when science is lacking; this sentence should read "When science is lacking, based decisions related to the protection of PTE species on Best Professional Judgment."

Ecology has revised the rule to address this comment. The final rule reads: :In addressing issues related to critical areas, ~~include~~ use scientific and technical information, as ~~provided for in WAC 173-26-300(2)(a)~~ described in section 300(2)(a), and include best available science, as provided for in chapter 36.70A RCW. When science is lacking, base decisions related to the protection of ~~PTE~~ T&E species on an approach that minimizes risk to those species and places the highest priority on their protection and recovery restoration."

320(2)(c)(i) Wetlands

Amend this section to encourage local governments to acquire wetlands within their jurisdiction as a way of protecting these critical areas.

The general planning provisions of the guidelines encourage consideration of non-regulatory provisions as well as regulatory provisions. There are several sections where such a provision might be inserted in addition to wetlands and thereby rather that insert it in each, the general provisions will be relied upon as adequate for all.

320(2)(c)(i)

Alteration of wetlands near the shore should be prohibited. Buffer requirements should be based on BAS. This section should require the use of "best available science" rather than "scientific and technical information". We support the requirement to "achieve ... no net loss ... including lost time". Wetlands serve a vital role in maintaining populations of PTE species. Even a temporary loss of wetlands could have a devastating impact in some areas.

While we recognize that protection and preservation of the shoreline and adjacent wetlands is critical to maintain the ecological functions, economic and aesthetic values of the state, not all impacts can be avoided. The SMA provides for a balance of economic development and shoreline protection. Ecology has amended the rule to assure that both the GMA standard of BAS and the SMA standard of "scientific and technical information" are applied (see response to Section 320(2)(b)(ii), above).

320(2)(c)(i)(A) Wetland use regulations

Given the extensive loss of wetlands in Washington, it is not adequate to set out a minimum policy of no net loss of wetland area and functions. The State must firmly commit itself to a net gain of wetland area and functions and must set this out in this section. This section must make clear that wetlands are not suitable areas for the types of uses listed on page 121 and that avoidance remains the highest priority.

Since this section deals with the regulation of impacts to wetlands it is not appropriate to require a net gain in area or functions. The long-term net gain in wetland area and functions must be achieved through non-regulatory efforts. This section states the types of actions

that must be regulated and subsection (C) requires that mitigation sequencing (including avoidance) must be followed for any alterations to wetlands.

320(2)(c)(i)(A)

A "no net loss of time standard" will result in near impossible mitigation requirements for all development.

The requirement to factor in temporal loss of wetland functions from short-term impacts or when compensatory mitigation occurs after the impact does not impose an unreasonable or unattainable standard on mitigation. It is common practice today to use replacement ratios to address temporal loss of function.

320(2)(c)(i)(A)

These standards state "…Use regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function, and "The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;… While wetland mitigation is a current regulatory requirement of the US Army Corps of Engineers and Washington DOE, this regulation may require that wetland mitigation be completed prior to the development within an existing wetland. This could create an additional cost to the aggregate applicant, as well as time delay. If the reclamation plan is for the creation of wetlands, the net impact of mitigation before development may be the creation of twice the required mitigation area.

This section does not require that all wetland mitigation be completed prior to the impact. It directs local governments to factor in any temporal losses from short-term impacts into their regulations. There are many ways to do this and this language does not imply that "up-front" mitigation is required. However, Ecology has added new language for compensatory mitigation, as described in response to comments on section 320(2)(c)(i)(F), below.

320(2)(c)(i)(A)

Add 8th bullet. Add the following sentence at the end of biological characteristics of wetlands. Including but not restricted to pollutants such as a), excess nutrients petroleum hydrocarbons. c) toxic organics, and d) heavy metals.

Ecology respectfully declines this suggestion, because the proposed change would be redundant.

320(2)(c)(i)(A)

Regarding significant vegetation removal, RCW 90.58.150 should also be referenced in addition to RCW 76.09.

The provisions of RCW 90.58.150 are properly addressed elsewhere in the document and need not be referenced here.

320(2)(c)(i)(B) Wetland rating or characterization

Should be changed to: "Local governments shall consult the Washington State Wetland Rating System, Eastern or Western Washington version as appropriate."

Local governments are directed to "consult" the Washington State Wetland Rating System. This rating system is not based on best available science and is overly reliant on size. Research in the Puget Sound areas has shown that some wetland functions, such as richness of plant communities and amphibian habitat, are not directly related to size.

Here, the language references should be for resource value and functions performed by wetlands to be determined by Best Available Science as the wetland categorization standard. Without adding "societal value" such as rarity of wetland—a bog — for example, would not be classified as high value. There is a difference between a wetland categorization standard and a wetlands rating system. What is really meant in this principal section—categorization standard or rating system? Few local governments have wetland scientists on staff. Even among this professional group, interests, loyalties, and interpretations can vary widely. The lack of unclear classification standards in this document, leaves citizens, and local government staff with no guidance.

The rating system is not based on best available science and is overly reliant on size. Research in the Puget Sound area has shown that some wetland functions, such as richness of plant communities and amphibian habitat, are not directly related to size.

Ecology has revised the rule to address this comment. The final rule reads:

"Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should ~~consult~~ either use the Washington State Wetland Rating System, Eastern or Western Washington version as appropriate, or they should develop their own regionally-specific, scientifically-based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. Higher quality/functioning wetlands should receive higher levels of protection. Wetland classifications, together with protective standards, for the specific classifications shall be sufficient to protect or restore ecological functions and PFC for T&E species. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed."

This language ensures that wetlands are categorized in a scientifically sound manner while providing flexibility for local governments to address regional differences. The state rating systems are based on current scientific information and do account for plant species diversity and amphibian habitat. Size is only one of nine factors evaluated in determining the habitat value of a wetland.

320(2)(c)(i)(B)

The new regulations ignore local CAO's and instead revert to the state wetland rating system. A 1998 CTED report indicated 70% of counties and 83% of cities do not use state model guidelines for wetlands and buffers. Since GMA CAO's have no language about restoration or recovery implementing the new guidelines would create and additional set of regulations for the same critical areas. The aim of restoration and use of state documents exceeds the scope and intent of the GMA and SMA.

The provisions of the guidelines related to critical areas set minimum performance standards for critical areas located in shoreline jurisdiction as necessary to assure protection of shoreline resources. Local alternative systems that provide an equivalent level of protection may be used.

320(2)(c)(i)(B)

Add the following to this section. "Wetlands, even small ones, provide a mosaic of habitats that are desirable for maintaining genetic diversity in wetland dependent species. This means that remnant wetlands in an urban area (e.g. Kellogg Island in the industrialized Duwamish River in Seattle) can be extremely valuable. Local governments are cautioned against using wetland rating or categorization systems that marginalize isolated wetlands."

Ecology does not believe it is necessary to include the suggested language. The state's wetland systems

address the concerns expressed in this comment by including rarity and wetlands or local significance.

320(2)(c)(i)(C) Alterations to wetlands

Please amend this section on "Alterations to wetlands" to state that master program provisions shall promote a net gain in wetland area and functions.

Ecology believes it is inappropriate to require that regulatory programs promote a net gain in wetland area and functions. Net gains in wetland area and functions must be attained through non-regulatory programs.

320(2)(c)(i)(C)

Add "Hazardous Liquid Pipelines and Natural Gas Pipelines are not allowed in wetland areas."

Ecology believes it is inappropriate to add the suggested revision. Hazardous liquid pipelines and natural gas pipelines may be permitted in wetland areas if they cannot be avoided and if they will not result in unmitigatable significant adverse impacts.

320(2)(c)(i)(D) Buffers

There should be clear minimum buffer standards to provide standards for local governments and ensure protection for wetland ecological functions. These standards should relate to buffer characteristics, as well as width. Requirements for buffer zone widths and management should be based on "best available science", not "scientific and technical information".

There are many ways to develop and implement buffer protection standards. This section is intended to ensure that local governments develop scientifically-based buffer protection standards without imposing a one-size-fits-all standard. The character and widths of buffers necessary to protect wetlands will depend, to a significant extent, on how wetlands are categorized. However, local governments will be required to demonstrate that they included the pertinent scientific information in their buffer protection standards.

320(2)(c)(i)(D)

The last sentence should include the phrase: "...and the potential impacts associated with adjacent land use."

Ecology has revised the rule to address this comment. The final rule reads:

"Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long-term. Requirements for buffer zone widths and management shall take into account the ecological functions, characteristics, and setting of the wetland, the potential impacts associated with the adjacent land use, and other relevant factors.~~Wetland buffers shall be established, restored, and/or maintained in a natural condition. Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long-term. Requirements for buffer zone widths and management shall be based on scientific and technical information and shall consider the ecological functions of the wetland that need to be protected.~~"

320(2)(c)(i)(E) Mitigation

Please amend this section on "Mitigation" to state that avoidance of wetland impacts is the highest priority established under WAC 173-26-020.

The requirements for mitigation sequencing are addressed in the definition of mitigation and need not be revisited here.

320(2)(c)(i)(F) Compensatory mitigation

Should be changed to: "Compensatory mitigation shall be allowed only after mitigation sequencing is applied."

Please amend this section on "Compensatory mitigation" to state that avoidance of wetland impacts is the highest priority established under mitigation sequencing.

Ecology has revised the rule to address this comment. The final rule reads: "Compensatory mitigation ~~should~~ shall be allowed only after mitigation sequencing is applied."

320(2)(c)(i)(F)

This definition should be clarified to ensure that compensatory mitigation for wetlands will involve compensating for wetland impacts with wetland mitigation, not with other resources.

There are situations where creation, restoration or enhancement of non-wetland aquatic resources is appropriate and adequate to compensate for impacts to wetlands, particularly where the wetland impacts are minimal and other aquatic resources are scarce.

320(2)(c)(i)(F)

Please amend this section on Compensatory mitigation to require performance bonds with a requirement that any performance bond include a condition that the amount bonded shall be used to restore or remediate the impacts from the development should the bond be forfeited.

The compliance assurance provisions of Section 300(2)(g)(ii) address this issue.

320(2)(c)(i)(F) Mit. Banks

There are no stream reaches large enough to provide an adequate number of bank debtors or impact sites to support a bank. Limiting mitigation options to stream reaches is an incremental approach that is contrary to the comprehensive approach recommended in all regional plans. This rule will eliminate the opportunity to consolidate small mitigation areas into one large area of greater ecological benefit. This rule language will automatically restrict compensation to stream reaches where it is not necessary. Please review the requirements of RCW 75.46, and the Alternative Mitigation Policy Guidance Interagency Implementation Agreement signed by Ecology in February 2000.

Wetland mitigation banking is a promising strategy that is in compliance with the intent of the SMP guidelines. Wetland mitigation banking is part of an overall mitigation strategy that should be prioritized based on existing conditions and functions within a watershed as determined based on watershed plans and programs. The proposed language inappropriately attempts to restrict the use of wetland mitigation banks, potentially limiting the implementation of a very useful policy tool. King County opposes the amendments specific to wetland mitigation banking as proposed. We recommend that this language be changed to echo the language on page 49 which states: "Credits from a . . .mitigation bank may be used to compensate for unavoidable impacts in accordance with chapter 90.84 RCW...."

If a mitigation bank is required to use a function-based approach, are other forms of compensatory mitigation required to use a function-based approach? Functional replacement will be difficult to implement.

Under RCW 90.84, DOE established a Wetlands Mitigation Banking Advisory Team to assist in the drafting of rules that will govern state certification of mitigation banks. This section undermines this process by placing unreasonable restrictions on mitigation banking that were never

addressed nor approved by the Advisory Team. 1) Wetland functions should be considered when establishing credits, but such functions cannot be the sole basis as current science on wetland functions is not adequate to make such a specific determination. As such, the majority of existing rules on mitigation banking, including the imminent rules from DOE, base the number of credits generated at a bank site on wetland acreage. 2) PTE species include more than salmonids, yet the Path B language narrowly addresses salmon species. 3) Path B unreasonably restricts impacts to the same stream reach, making many banks financially and practically infeasible.

This is especially problematic in already degraded stream reaches, when funding may be better spent to enhance or restore areas in less degraded systems. DOE should be encouraging wetland mitigation banks, not only because it is state policy, but also because they may be the only hope for creating significant, lasting salmon habitat while allowing needed development to continue. Further, DOE should not undermine the state mandated rulemaking process that Ecology itself created.

We disagree with the criteria outlined in this paragraph, which severely limits and restricts the use of wetland mitigation banks in Washington. The overarching policy direction that should define this section is the Alternative Mitigation Policy developed by the Departments of Ecology, Transportation, and Fish and Wildlife. Please revise the rule to avoid conflicting mitigation policy directives in Ecology. The first sentence requires that mitigation banks may be used to compensate for unavoidable impacts related to wetland functions only. This prohibits the use of out-of-kind mitigation and also limits to some extent off-site mitigation. Both of these restrictions would limit the use of a mitigation bank that may be constructed to meet critical watershed needs. In addition the tools currently available to assess wetland functions are limited, and wetland functional tools have not been developed for all types of wetlands in Washington. The second sentence in the paragraph requires that functions contributing to PTE species are adequately mitigated within the same stream reach. This statement appears to be designed to address fish and not terrestrial species. PTE also would include rare plants, birds etc., not just fish. The provisions, as written, will not allow bank credits to be used for compensation for habitat for any of these species unless the bank is in the same stream reach as the impact. The provisions are not written in accordance with Wetland Mitigation Banking Rules currently being developed by Ecology. Wetland mitigation banks and the use of credits from these banks must be evaluated on a case by case basis. Ecology and an advisory team (of which WSDOT is a member) have been working more than a year to a rule for wetland mitigation banking that is flexible and consistent with Federal banking guidelines. These provisions appear to have been drafted without the banking rule development process in mind.

Although it is a laudable goal to limit compensation only to loss of functions, the status of wetland science does not currently exist to be able to do this. Therefore, rules on wetland mitigation banking, including Ecology's proposed rules (WAC 173-700) and King County's administrative rules, base the number of credits generated at a bank site primarily on wetland acreage.

Ecology has revised the rule to address these comments. The rule now reads:

Unless it is demonstrated that a higher level of ecological functions contributing to PFC for T&E species would result from an alternate approach, compensatory mitigation for ecological functions necessary for PFC for T&E species must be either in kind and on-site, or in kind and within the same stream reach or drift cell. Compensatory mitigation for functions necessary for PFC for T&E species must be in place, with an approved performance monitoring program, prior to the authorized impacts occurring.

Credits from a state certified mitigation bank may be used to compensate for unavoidable impacts ~~related to wetland functions only~~, in accordance with chapter 90.84 RCW and chapter 173-700 WAC, provided that the provisions of this section, compensatory mitigation are met ~~impacts to wetland functions contributing to PTE species are adequately mitigated within the same stream reach.~~

The new language holds all types of wetland compensatory mitigation to the same standards, rather than requiring separate and more stringent standards for wetland mitigation banks.

The new language requires the advance establishment of compensatory wetland mitigation prior to impacts occurring to ecological functions contributing to T&E species. Because of the high level of risk and historically poor performance of compensatory wetland mitigation, the revised language requires that the compensation be in place prior to impacts occurring in order to minimize potential function losses from failed compensation efforts.

A caveat has been include in the new language on compensatory mitigation, which allows out of stream-reach or drift cell compensation when it is demonstrated that such compensation would provide higher levels of ecological functions. The addition of this language does not limit the service areas of banks in areas where there are listed species. Rather, the revised language will allow the use of banks, outside of the stream reach or drift cell where an impact occurs, if the use of the bank will result in greater ecological benefits than on-site mitigation.

Language limiting the use of wetland mitigation bank credits for impacts to "wetland functions only" has been removed since a method for assigning quantitative function-based credit units does not exist at this time.

Finally, the revised language is now consistent with the Alternative Aquatic Mitigation Policy Guidance Interagency Implementation Agreement (signed by Ecology, WDFW, and WSDOT in February 2000).

320(2)(c)(i)(F) Mit. Banks

You have added language which we do definitely support that credits from a state certified mitigation bank, and particularly when they contribute to PTE species, can only be mitigated within the same stream reach. What we would like to ask you to clarify is if such a mitigation bank is being used for either a lake or an estuarine area, that to qualify it as being within the same stream reach would not be adequate. You need to use some kind of a drainage basin or some other language for that.

The Sierra Club opposes the use of mitigation credits from wetland mitigation banks. When mitigation credits are available, there is a high likelihood that mitigation credits will be withdrawn for non-water dependent uses that otherwise would have been sited outside the wetland area. This section is vague since "within the same stream reach" is not defined. We request that the last paragraph in subsection (F) be deleted and that wetland mitigation bank credits be rejected as a form of compensatory mitigation.

I support limiting use of mitigation banks to the same stream reach (as the impact?).

Mitigation banks must be in the same watershed as the to-be-destroyed wetland and must be of the same type. Don't let anybody substitute a pond with cattails for a wooded wetland.

The state legislature and Ecology both support the use of wetland mitigation banks as a viable alternative for providing compensatory mitigation for unavoidable impacts to wetlands.

The revised language addresses some of the issues associated with compensatory wetland mitigation. Many of these issues were raised in comments regarding wetland mitigation banking, such as the cumulative loss of functions within a sub-basin and out of kind mitigation. These concerns apply not just to wetland mitigation banking, but are applicable to all forms of compensatory wetland mitigation. Because these issues are not associated solely with wetland mitigation banking, the revised language addressing these concerns is included in the generally compensatory wetland mitigation section rather than being listed only under wetland mitigation banks.

While on-site and in-kind mitigation should be a first consideration, the proposed language makes it clear that the most important consideration when evaluating compensatory mitigation options is the net ecological benefit. Out-of-kind or off-site mitigation is allowed when greater ecological benefit can be derived from it. For example, credits from a wetland mitigation bank that addresses limiting factors in a watershed and contributes to PFC for anadromous fish may be preferable ecologically to requiring the replacement of a category IV wetland on a development site.

320(2)(c)(i)(F) Mit. Banks

Mitigation banking should not be permitted in areas where endangered salmonids are present: Banks are not proven and could fail.

Mitigation banking will be able to occur in areas with threatened and endangered species. Banks can provide habitat and refuge for PTE species. Local governments who are conducting watershed and comprehensive land-use planning can use mitigation banks to restore and protect ecosystem processes or to address limiting factors identified in a watershed. Recent studies show that over 300 wetland mitigation banks have been developed in the United States. While some early wetland banks have failed, losses to the environment are minimized through a variety of protection measures such as financial assurances and phased release of credits under Chapter. 173-700 WAC. Ecology supports wetland mitigation banking as a method to provide more ecologically beneficial compensatory mitigation.

320(2)(c)(ii) Geologically hazardous areas

Substantial geologic hazardous areas associated with volcanic hazards occur within the shoreline jurisdiction in numerous major watersheds in Western Washington. However these proposed regulations fail to acknowledge this hazard. When a volcanic event occurs and "properly functioning conditions" have been substantially altered, are the reconstruction of basic societal infrastructure such as roads and utilities going to be held responsible and accountable for restoring "PFC"?

In the event of a catastrophic event, it is expected that state and local governments will address the emergency effectively.

320(2)(c)(ii)

Amend the following sentence in the second paragraph as follows: "Allowable development must incorporate adequate drainage control THAT FIRST LOOKS TO MINIMIZING RUNOFF AND ON-SITE RETENTION to prevent erosion or significant ecological impacts.

Ecology believes the suggested additional language would be redundant with the phrase "adequate controls to prevent erosion or create significant ecological impacts."

320(2)(c)(ii)

Last paragraph, 2nd sentence, add "ecological", to read: "...where no alternative locations are available , and adverse ecological impacts are mitigated."

Ecology has revised the rule to address this comment. The rule now reads: "Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed water-dependent uses where no alternative locations are available and significant ecological ~~adverse~~ impacts are mitigated."

320(2)(c)(ii)

Add: "Hazardous Liquid Pipelines are not allowed in geological hazardous areas."

This concern is covered by the first sentence in the second paragraph, which reads: "Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or ecological functions during the life of the development."

320(2)(c)(ii)

Amend this section as follows: "Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified exports using an interdisciplinary approach including engineers or geologists and biologists who are who are knowledgeable about the regional and local shoreline geology, biology and processes."

Ecology respectfully declines this suggestion, as the definition of geotechnical reports (Section 020 (21)), states that "Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers (or geologists) who have professional expertise about the regional and local shoreline geology and processes.

320(2)(c)(iii) Critical saltwater habitats

It would improve clarity if this subsection were organized in the same format as in other subsections, i.e., Applicability, Principles, and Standards.

Ecology has revised the section titles to "Applicability, Principles, and Standards" to address this comment.

320(2)(c)(iii)(A) Applicability

Should be changed to: "Therefore, effective protection and restoration of critical saltwater habitats shall integrate management of shorelands as well as submerged areas."

The use of should is reasonable in this provision as it allows consideration of exceptions that are consistent with the overall purposes of the SMA and the guidelines.

320(2)(c)(iii)(A)

The definition of critical saltwater habitat must include aquatic vegetation.

The definition includes aquatic vegetation, but is only intended to include "critical" saltwater areas, not all saltwater areas. The first sentence has been amended as follows: "Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance, ~~and smelt~~, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association."

320(2)(c)(iii)(A)

Amend this section to encourage local governments to acquire sensitive saltwater

habitat within their jurisdiction as a way of protecting these critical areas.

Acquiring habitat an activity that is not a regulatory actions specifically linked to the SMA.

320(2)(c)(iii)(B) Principles

Missing important sentence: "All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas." This sentence was included in Path A but was massing from Path B.

Ecology has revised the rule to address this comment. The rule now states that "All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas."

320(2)(c)(iii)(B)

Local governments, in conjunction with state resource agencies and affected Indian tribes, shall classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements for priority species. The following phrase should be included: "Habitat elements with which federal- and state listed endangered, threatened, and priority species have a primary association and which if altered, may reduce the likelihood that species will maintain its population and reproduce over the long term." These words were included in Path A but were missing from Path B.

Ecology has revised the rule to address this comment. The rule now reads: "Local governments, in conjunction with state resource agencies and affected Indian tribes, shall classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements ~~for priority species~~ with which federal- and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance."

320(2)(c)(iii)(B)

Management planning should incorporate not only state resource agencies and Tribes, but public utilities and Washington State Department of Transportation.

The general provisions for master program development include a requirement for consultation with all appropriate agencies. The reference to DNR and the tribes in this section is specifically included because of their proprietary and treaty rights interests in these areas.

320(2)(c)(iii)(B)

This list required for this planning strategy is massive. Collecting this data will require significant financial resources and time.

Ecology agrees that collecting this data will require significant financial resources and time. Note that much of the data is required for baseline inventory. Also, under 320(2)(c)(iii)(C), local governments have the option of requiring a site-specific inventory.

320(2)(c)(iii)(B)

In the bulleted list of data and trends to evaluate for management planning, "Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose and those serving a necessary purpose."

In the bulleted list, add "Retaining necessary shoreline protection to existing infrastructure" as an item that management planning should address.

Ecology presumes that all bulkheads that are *not* "those serving no protective purpose" are necessary.

320(2)(c)(iii)(B)

Please amend this section on Comprehensive Saltwater Habitat Management principles to include in the management planning an evaluation of aquatic sediment characteristics. Given that shoreland development runoff accumulates in marine sediments it is imperative that local governments be aware of, and take steps to avoid, sediment pollution in saltwater habitats.

The provisions regarding inventory include the "physical characteristics of the habitat," which addresses the issue of sediment.

320(2)(c)(iii)(B)

Under "The management planning shall address the following, where applicable"; the third bullet refers "incompatible uses", yet there is no definition of incompatible uses. This evaluation would therefore be quite subjective and unenforceable.

A definition of incompatible uses in this context is not reasonable in a statewide regulation as it would vary greatly around the state and in different settings.

320(2)(c)(iii)(B)

The (last bullet in this section) refers to "Protecting existing and restoring degraded sediment inflow and transport regimens." Since there are two types of sediment, that which occurs with runoff causing water quality problems in fresh water streams and marine sediments which trap toxic chemicals that impact benthic organisms, this sentence should be rewritten to clarify that reducing sediment loading into streams and restoring degraded marine sediments deposited into Puget Sound and other bays, harbors and estuaries is needed.

Ecology has revised the rule to address this comment. The last bullet on the list reads: "Correcting activities that cause excessive sediment input where human activity has led to mass wasting."

320(2)(c)(iii)(B)

Amend the second full paragraph on this page as follows: "Local governments SHALL consider both commercial and recreational shellfish areas. COMMERCIAL SHELLFISH AREAS UTILIZING NATIVE SPECIES SHALL BE GIVEN PRIORITY."

Aquaculture is a preferred use. There is no basis in the SMA for restricting the use to native species. The issue is addressed by regulations of the department of fish and wildlife.

320(2)(c)(iii)(C) Standards

This paragraph requires WA State Ferries to obtain a conditional use permit for some types of regular repair and maintenance activities. The blanket requirement for a conditional use permit for all human-made structures intruding into or over critical saltwater habitat is burdensome. At the end of the bulleted list, add "The project is necessary to meet the needs of the planned development."

A new conditional use permit is not required to maintain an existing authorized development unless the activity is new additional development. The second bullet addresses the need for the facility.

320(2)(c)(iii)(C)

In order for one of these structures to be approved, PFC must be protected or restored as determined by the department with consultation from natural resource agencies and tribes. This takes all decision making authority away from the local jurisdiction. If standards are developed that are in compliance with the act and ESA, the County should have authority in approving and conditioning these projects. It further states that the applicant must demonstrate

the public's need for such a structure. This would be nearly impossible for those developments that are in association with single family residential development.

In the first bullet, which begins "PFC for PTE", we would suggest that clarify your intent to protect existing and restore degraded habitat. We suggest the following language be substituted in that first sentence: "PFC for PTE species is maintained or established by protecting existing, functioning habitat or restoring degraded habitat as determined by the department ...."

Ecology has revised the rule to clarify the issue. The first bullet under (C) reads: "PFC for T&E species is protected or restored as determined ~~by the department~~ in consultation with natural resource agencies and affected Indian tribes."

320(2)(c)(iii)(C)

Add: "Hazardous Liquid Pipelines are not allowed in critical saltwater habitats and shorelands associated with marine waters and estuaries."

Ecology has revised the rule to address this comment regarding threats to human health and safety. The last bullet on the list reads: "PFC for ~~PTE~~T&E species is protected or restored as determined ~~by the department~~ in consultation with natural resource agencies and affected Indian tribes. The proponent of a structure over critical saltwater habitat must demonstrate that there will be no loss of ecological functions provided by the habitat and no threat to human health or safety upon completion of the project. The analysis demonstrating no loss must account for potential cumulative impacts and risks to the environment resulting from the proposed action…"

320(2)(c)(iii)(C)

Until an inventory of critical saltwater habitat has been done, SMPs shall condition all over-water and near-shore development with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. This sentence is inconsistent with recovery standards. The guidelines must clearly prohibit such development until the inventory is completed. The new guidelines should do more than increase permitting time and costs for developments: salmon recovery must be a clear priority.

Prohibition of development pending an inventory is not consistent with the procedural provisions of the SMA. This provision assures that, at a minimum the information is gathered and evaluated as a part of the permit review process.

320(2)(c)(iv) Critical freshwater habitats

Change the name of this section to acknowledge that riverine corridors are a subset of GMA-designated "Critical freshwater habitats."

Ecology has revised the title to add the phrase "Critical freshwater habitats."

320(2)(c)(iv)(B)(II)

Delete "Conservatively" on the basis that it is subjective and not measurable or predictable.

The term is in a statement of principles, so Ecology believes the language is appropriately general.

320(2)(c)(iv)(B)(II)

The proposed regulation states "Conservatively regulating the uses within shoreline jurisdiction, the stream channel, associated channel migration zone, wetlands, and the flood plain [Emphasis added]. Water quality and hydrological processes also depend upon subsurface flows through the adjacent hyporheic zone, surface water run-off, and ground water in lands outside the flood plain. For this reason, comprehensive watershed efforts are the most effective approach to corridor management…"

The jurisdiction of the proposed shoreline regulations, and restrictions, will extend beyond the 200-foot designation to include the entire one hundred-year floodplain. In addition, inclusion of areas defined by the hyporheic network, and other criteria, could extend jurisdiction beyond the floodplain to include all valley alluvium deposits. Such extension could constitute a "taking" of private lands by restriction far beyond proven impact boundaries. In the absence of proven scientific evidence, the shoreline jurisdiction must be limited to the 200-foot designation.

This citation may extend shoreline influence and regulation beyond defined shoreline jurisdiction. As defined by WAC 173-26-020 Definitions, definition (20), the term flood plain is "…synonymous with one hundred-year floodplain…" . . .

The regulations can and should influence actions beyond the jurisdiction of the SMA to the extent they effect shoreline resources through the provisions of RCW 90.58.340. The provisions cannot and do not extend the regulatory jurisdiction of SMA, as defined in 90.58.030.

320(2)(c)(iv)(B)

Master programs should require that dikes or other structures, when allowed to be constructed or retrofitted, allow the unrestricted flow of water between dry and braided channels. We recommend that you reference RCW 90.58.270 that describes removal policy for structures built before 12/4/69.

The guidelines prevent such structures in the CMZ. The guidelines do not apply to existing legal developments. The CMZ would generally include dry and braided channels. It is not necessary to restate the statutory policy of 90.58.270.

320(2)(c)(iv)(B)

King County supports subsection 173-26-320(2)(c)(iv)(B), that would "prevent restrictions to channel movement within the channel migration zone..." This requires clear guidelines for determining the extent of the CMZ.

Ecology will prepare technical materials for delineating CMZs.

320(2)(c)(iv)(B)

Last paragraph, first sentence - add vegetation to list of corridor features.

Ecology has revised the rule to address this comment. The rule now reads: "A natural channel configuration with features such as pools, off-channel habitat, vegetation, and refugia is especially important to ~~PTE~~ T&E species."

320(2)(c)(iv)(B)

Amend this section on Riverine corridors and other freshwater fish and wildlife conservation areas to encourage local governments to acquire sensitive fish and wildlife conservation areas within their jurisdiction as a way of protecting these critical areas.

Although effective, acquisition is not a regulatory activity covered under the SMA.

320(2)(c)(iv)(C) Standards

This section contains several vague exceptions to shoreline modification regs including some urban development and special area planning projects. These need more clarification as to what projects and practices are allowed and what is prohibited. We are also concerned about the long list of development and uses that may be allowed in Riverine corridors. In particular, we request that the last bullet on this page be deleted.

Since there are no standards for special area planning, there is no assurance that protecting and restoring properly functioning condition for priority species and habitats will be addressed. In addition, there is no procedure for determining when and how any such "development" is consistent. Certainly, local governments are incapable of making such a determination.

Ecology does not believe the list of exceptions is vague. For example, the exception for development in urban growth areas is for areas "where existing human-made structures prevent active channel movement." This would apply to urban areas where shorelines have been extensively filled and channels are contained in a levee or dike. This allowance is modified by the requirement that new development "must not adversely affect hydrological conditions and must include where otherwise required under the provisions of this chapter appropriate restoration..." The other exceptions are similarly qualified with requirements to protect and restore the environment.

320(2)(c)(iv)(C)

Regarding standards for Riverine corridors, RCW 90.58.150 should also be referenced in addition to RCW 76.09 in the second bullet on this page.

Ecology has revised the rule to address this comment. The rule now reads: "Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules and RCW 90.58.150, where applicable."

320(2)(c)(iv)(C)

This standard is described under "Riverine corridors and other freshwater fish and wildlife conservation areas." Yet there is a direct reference in this bullet to affects of the "drift cell" a marine environment function according to the proposed definition

Ecology has revised the rule to address this comment. The rule now reads: Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists. Where such structures are allowed, mitigation shall be required ~~to maintain~~ that protects or restores impacted functions and processes in the affected section of watershed ~~or drift cell~~.

320(2)(c)(iv)(C)

This section would cause significant restriction to utility companies and their customers in areas that would be designated "channel migration zones". The 4th bullet makes no allowance for utilities that are installed within existing impervious surface or other previously impacted areas. As written, utility extensions into undisturbed areas are treated the same as those bored down the road shoulder with minimal surface disturbance and no vegetation removal. The 6th bullet does allow development of a previously altered site, but does not mention utilities. Jurisdictions need clear guidance on how to treat utility projects, which have been the source of confusion and misinterpretation of the shoreline regulations in the past. Delete "utility lines, and other public utility and" from the 4th bullet. Add a new bullet following the 6th bullet: "Utility extensions on a previously altered site where it is demonstrated that the utility extension does not create significant adverse impacts to PTE species."

The provisions of the fourth bullet and the eighth bullet address the comment. If the facility has no impact, then no mitigation is required.

320(2)(c)(iv)(C)

Fifth bullet - "repair and maintenance of an existing legal use..." How will "significant ecological impacts" be measured? Can we allow for some short-term small-scale impacts for the benefit of long-term improvements?

The provision, like all use of the term "significant ecological impacts" require application of factual information and professional judgement in determining if the impacts are significant [see definition 020(47)].

320(2)(c)(iv)(C)

Eighth bullet - end of sentence refers to "restoration" of PFC. This should be qualified by saying "to a more natural condition" or "an improved state beyond existing conditions".

This phrase would be redundant with the definition [see section 020(38)].

320(2)(c)(iv)(C)

Last bullet, top of page: re-evaluate your allowance of additional development where human-made structures prevent active channel movement. Most of these structures are not capable of withstanding the flooding events we have experienced in the last decade. Allowing more development in flood-prone areas merely increases the public costs of flood control response and cleanup. This type of development is counter to the goals and policies of the SMA that expresses the state-wide interest "in the prevention and minimization of flood damages." This proposed standard will lead to increased flood damage not minimization and is counter to the principles laid out in Section (3)(b)(v).

Flood hazard reduction is addressed in Section 320(3). Note that this exception states that "In this exception, the new development must not adversely affect hydrological conditions and must include where otherwise required under the provisions of this chapter appropriate restoration which contributes to the attainment of properly functioning condition."

320(2)(c)(iv)(C)

Add a new bullet stating that significant vegetation removal does not include removal of invasive species.

The definition of significant vegetation removal [section 020(48)] states that "the removal of invasive or noxious weeds does not constitute significant vegetation removal."

320(2)(c)(iv)(C)

Add: "Hazardous Liquid Pipelines are not allowed in riverine corridors and other freshwater fish and wildlife areas."

This section addresses this concern as follows: "As part of this comprehensive approach, local governments shall integrate categories of master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses**, to protect human health and safety** and to protect and restore the corridor's ecological functions and ecosystem-wide processes *(emphasis added)*."

320(3)(b) Flood hazard reduction - Principles

Amend the first sentence in this section as follows: "Past AND CURRENT land use practices have disrupted habitat processes, INCREASED THE RATE AND VOLUME OF RUNOFF, thereby exacerbating flood hazards and reducing ecological functions AND EXPOSED MORE AND MORE DEVELOPMENT TO FLOOD DAMAGE."

Ecology respectfully declines to add the requested language, as the proposed revision does not add substantively to the provision.

320(3)(b)

The draft guidelines state "structural flood hazard reduction measures shall be avoided

whenever possible. When necessary [emphasis added], they shall be accomplished in a manner to minimize change to shoreline ecological functions and ecosystem-wide processes." Language needs to be added explaining or giving examples of conditions when structural flood hazard reduction measures are "necessary".

The provision, like all use of the term "when necessary" require application of factual information and professional judgement in determining if the project is in fact necessary.

320(3)(b)

SMPs should require flood hazard reduction measures to be conducted in accordance with the WDFW Integrated Guidelines for Bank Stabilization.

Ecology will reference appropriate guidance materials, such as the Integrated Guidelines for Bank Stabilization, in technical assistance materials.

320(3)(b)

The guidelines should prohibit the construction of new facilities (including extensions of existing facilities), unless the applicant can show that (1) there is no feasible and less damaging alternative, and (2) mitigation sequencing has been conducted to compensate for any unavoidable impacts on PTE species and their affected critical habitats.

Flood hazard reduction provisions need to address a wide range of existing conditions and circumstances. Whole communities exist within flood prone areas, as well as farms, freeways, shopping malls and a multitude of other uses. While it is arguable that these should not be there, their existence is a fact that must be recognized. Limiting consideration to a simple feasibility and impact test fails to recognize the need to properly address this existing condition.

320(3)(b)

Please review your self-imposed limitation in these policies to the 100 year flood plain. The SMA provides no such limitation. Rather, it expresses the state-wide interest "in the prevention and minimization of flood damages." We know that damaging floods that exceed the 100-year flood plain level occur more frequently than local governments expect. Therefore, we request that Ecology comply with the SMA policy of seeking to minimize flood damage.

To promote flood hazard reduction, require local governments to prohibit wetland filling in shoreland areas within the 250-year floodplain.

Under the definition of "Shorelands" (RCW 90.58.030(2)(f)), the county or city may determine that portion of the one-hundred year flood plain to be included" in the jurisdiction of the SMP as long as, at a minimum, the floodway and the adjacent land extending 200 feet floodway is included. Under this definition the jurisdiction of the SMP cannot generally extend beyond the 100 year floodplain except in those limited circumstances where the line 200 feet from the floodway is greater than the floodplain. The 100 year floodplain is the standard regulatory area for all of the related programs. Part of the purpose of these guidelines is to coordinate with other related regulations and thereby it would be inconsistent with that purpose to use another flood frequency standard.

320(3)(b)(i)

Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures." Omit the phrase "where feasible" because it weakens the provision. Feasibility can be seen many ways, thus omitting it would reduce the chance for misinterpretation.

It is necessary and reasonable to consider feasibility, as the term is defined for the purpose of the guidelines, in determining appropriate flood hazard reduction measures.

320(3)(b)(ii)

Other types of planning efforts could include PTE recovery plans and basin water supply planning processes.

Comment noted.

320(3)(b)(iv)

Should be changed to: "When preparing master program provisions for flood hazard reduction measures, address the protection and restoration of ecological functions and ecosystem-wide processes on a comprehensive basis consistent with WAC 173-26-300 (3)(d)(i), (e), (f), and (g) and 173-26-320 (2)(c)(iv)." These sections were included in Path A but were missing from Path B.

Ecology has revised the rule to address this comment. The rule now reads: "When preparing master program provisions for flood hazard reduction measures, address the protection and restoration of ecological functions and ecosystem-wide processes on a comprehensive basis consistent with WAC 173-26-300(3)(d)(i), (e), (f), and (g) and 173-26-320(2)(iv)."

320(3)(b)(v)

Management efforts need to be implemented to return riverine corridors to more natural hydrological conditions and regimes that restore, as well as maintain properly functioning conditions.

Ecology does believe the provision achieves the objective of this comment. See also section 300(2)(c), which discusses objectives relative to protection and restoration of ecological functions.

320(3)(c)(i) Flood hazard reduction - Standards

Prohibiting subdivision of land if it will require any shoreline stabilization is taking the right to build a home on private land.

Subdivision is not a necessary prerequisite to building on a parcel of land that already exists. Restricting subdivision for residential purposes in areas that are unsafe for such use or where the subdivision will result in significant adverse effect on shoreline resources is inconsistent with the public interest and clearly within the reasonable exercise of land use control.

320(3)(c)(ii)

Structural flood hazard reduction measures must be set back as far as feasible from the channel migration zone. Unclear or vague: The statement "as far as feasible" is open to the discretion of local governments. "As far as feasible" may be interpreted incorrectly, resulting in flood hazard reduction measures being placed td close to the channel migration zone. Should be changed to: "In such cases, structural flood hazard reduction measures must be set back from the channel migration zone according to best available scientific and technical data."

It is necessary and reasonable to consider feasibility, as the term is defined for the purpose of the guidelines, in determining appropriate setbacks from the channel migration zone. The criteria and purpose for doing so are established in the guidelines.

320(3)(c)(ii)

Structural flood hazard reduction measures should be consistent first and foremost with the Frequently Flooded Element of the local jurisdiction's Critical Areas Ordinance which is developed to protect the functions of those critical areas. The flood hazard management plan is developed for compliance with FEMA, and does not

necessarily include standards consistent with SMA.

☒ The provisions of the SMA require inclusion of flood hazard reduction requirements. All structural improvements within shoreline jurisdiction must be consistent with the policy and provisions of the SMA. Planning related to the subject must therefore be consistent with GMA, SMA and other applicable state and federal regulations.

320(3)(c)(iii)

The first sentence in this sub-section (iii) requires that actions must include measures to restore ecological function, but it is not clear how much and when. This is too vague and project proponents will be able to comply with these requirements by taking the slightest action that might be construed as restoration.

☒ The somewhat vague terminology is necessary to allow judgement as to what is reasonable and appropriate for a particular jurisdiction. The overall intent is sufficiently clear.

320(3)(c)(iv)

Make the structure of sub-section (iv) and (v) the same as Path A for consistency. This Path B section (iii) combines the standards of sub-section (iii) and (iv) from Path A.

The reference to "vegetation conservation areas" should include a reference to the SMA section that describes these areas (WAC 173-26-320(5))

☒ Ecology has amended the rule to make the numbering sequence consistent with Path A. The reference to the vegetation conservation section is not necessary, in this context.

320(3)(c)(iv)

Flood hazard reduction projects as described in this section may occur in a channel migration zone only if it is determined that no other alternative to protect existing development is feasible. Missing idea: add - ...and if the development fails to qualify for any of the available federal, slate or local buy-out programs. There are profound economic, societal and geological costs to bailing out homeowners who chose to build in a flood .one or floodway. Those costs are unreasonable and homeowners and business owners are often better off to relocate.

☒ Ecology has amended the rule to address this comment. The rule now reads: "Exception: Flood hazard reduction projects as described in this section may occur in a channel migration zone only if it is determined that no other alternative to ~~protect existing development~~ reduce flood hazard is feasible.

Relocation and removal are addressed within the principles section as a consideration in crafting regulations.

320(3)(c)(iv)

The need for structural improvements shall be documented through a hydrogeological analysis. Missing key word(s): "The need for structural improvements in the channel migration zone shall be documented through a hydogeological analysis." These words were included in Path A but were missing from Path B.

An unclear term in this paragraph is "hydrogeological analysis", which does not appear to be defined in this document. Does it differ from a geotechnical analysis (defined in WAC 173-26-020? To fully address the need for structural improvements, and their potential impacts, a study should include hydraulics, geomorphology, geotechnical analyses, and biology.

☒ Ecology has amended the rule to address these comments. The rule now reads: "The need for structural improvements in the channel migration zone shall be documented through a ~~hydrogeological~~ geotechnical analysis."

320(3)(c)(iv)

The second to last paragraph in this section references a "habitat evaluation." This should be defined and standards made clear. Is this similar to the Services' "Biological Assessment" process?

☒ The sentence is intended to frame the analysis required, it is not intended to be a separate "biological assessment."

320(3)(c)(vi)

We oppose the mining of gravel in the river for any reason. Recovery of salmon must be a priority, and recovery is inconsistent with gravel mining in the river. If it is to be phased out, specify a time period, such as one year following the adoption of the master plan.

☒ In-stream mining is relatively rare and the conditions of the section will assure that the shoreline resources are protected. Each jurisdiction that has such mining activity will have to make an individual judgement on phase out provisions.

320(3)(c)(vi)

The Sierra Club supports the phase out of gravel mining for flood management purposes and requests that all gravel mining in or adjacent to shoreline areas be prohibited.

☒ The SMA is based on balancing economic and environmental interests in the shoreline. Sand and gravel are basic resources for a healthy economy. In some parts of the state the only location with significant quantities of gravel are in the river valleys and therefore wholly or partly within shoreline jurisdiction. While the use should be accommodated, the overall provisions of the guidelines assure that any mining that is initiated after the adoption of new SMP's will properly protect shoreline environmental resources and be consistent with the goals and policies of the SMA.

320(3)(c)(vi)

EPA supports the proposal to restrict or phase out gravel extraction activities within active channels of alluvial rivers. The possibly significant risks to successful salmon spawning and rearing habitats of listed species far outweigh the short-term and dubious perceived benefits to flood control. In cases of significant need, the burden of proof that the proposed gravel removal will do no harm to spawning or rearing habitats, should fall on the project proponent and be evaluated by an independent panel of qualified scientists familiar with fluvial geomorphology and aquatic ecology. We are more comfortable with Path B's standard for changing shoreline use designations from rural conservancy to mining.

☒ Comment Noted.

320(3)(c)(vi)

The intent is to eliminate all flood induced gravel removal. This would eliminate all bar scalping and possibly dam cleaning. While this may not be a large portion of the industry, it does meet some of society's demand for resource. If short-term removal can be accomplished based on studies, then the same should apply to removals in the long-term.

☒ The provision is not intended to address "dam cleaning" as best we understand that term as applying to necessary maintenance to assure continued operation of an existing facility. The activity of bar scalping has long term impacts to gravel supply and river hydrology that impairs properly functioning conditions. The phase out is

allowed to provide opportunity for jurisdictions where this is a more common activity to identify and develop other sources.

320(3)(c)(vii)

The application submittal requirements need to be more precise with respect to the scale of the area for which information should be submitted. In some instances (e.g., item A) watershed-wide information is required as part of the application package. It would seem to be preferable to limit this submittal data to the "affected area" or "river reach" and to include definitions of what is meant geographically by these terms.

It is appropriate to provide latitude for local government to adjust the application requirements to the site and scale of the project.

320(3)(c)(vii)(E)

Predicted impact upon shore and hydraulic processes, adjacent properties, and shoreline and water uses; Clarify impacts: replace "adjacent" with "upstream and downstream properties ...

Ecology does not concur that "impacts" needs to be clarified. Regarding the second point, although we appreciate the rationale for the comment, it would be difficult to determine what the appropriate distance "upstream and downstream" would be. It would vary depending on whether it is an urban or a rural setting, size of lots, and other factors. Ecology believes the requirement to consider impacts on "adjacent" lots is adequate to reinforce that applicants must consider impacts to other properties.

320(4)(b)(iii) Public access - Principles

Omit or define: The statement "To the greatest extent feasible consistent with the overall best interest of the state and the people generally..." is very broad, and open to a substantial amount of interpretation and confusion. To improve clarity, the statement should be omitted or defined.

Should be changed to: "Consistent with the overall best interest of the state, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water."

Concerning public access, what is and who determines "overall best interest of the state and the people generally"?

The statement is a restatement of the policy of the SMA (90.58.020). The statement is intentionally broad and allows varied interpretation to suit local circumstances. The overall meaning is sufficiently clear. The SMA establishes the public process whereby "the overall best interest of the state and the people generally" is determined. The process begins with local government in developing and adopting the SMP and together with the State through the review and approval of SMP's. The process is conducted in a context of broad public involvement.

320(4)(c) Public access – Planning process

Should be changed to: "At a minimum, the public access planning shall result in public access requirements for shoreline permits and policies, recommended projects, project descriptions, port master plans, and actions to be taken to develop public shoreline access to shorelines on public property."

The use of "should" is reasonable in this provision as it allows consideration of exceptions that are consistent with the overall purposes of the SMA and the guidelines.

320(4)(c)

Amend this section to address public access to encourage local governments to acquire public access to provide for these public benefits particularly in Urban areas.

The provision concerning public access planning includes consideration of acquisition of land for public access purposes.

320(4)(c)

Public access planning should account for future demand and lead to the designation or development of a wide range of access opportunities and locations in order to reduce crowding or overuse of established sites. It should be emphasized that access points free of development (other than a simple path to the water or similar improvement) are important for wildlife viewing, quiet strolls, solitude, education and the like. They are just as critical as elaborate park-like developments accommodating a large number of users. Public access plans should not rely excessively on existing public sites where new development creates significant new demand. New sites should be established where they can reasonably and conveniently serve the demand, while also protecting the natural environment.

Also, motor vehicle parking and other non-water-dependent development should be kept well away from the shore (outside buffer areas). Waterfront is too scarce and too sensitive to be consumed by more roads and automobiles. Plans should examine shorelines which are particularly attractive for public access improvements, but where existing roads, parking areas, signs, utilities and other structures diminish the public access potential for such areas. Plans should encourage the removal or relocation of such development well away from the shore.

Comment Noted.

320(4)(d)(iii) Public access - Standards

In determining the undesirability or incompatibility of public access... Missing key word(s): The previous sentence should read, "In determining the infeasibility, undesirability, or incompatibility .of public access..." These words were included in Path A but were missing from Path B.

Ecology has amended the rule to address this comment. The rule now reads: "In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider…"

320(4)(d)(iii)

Please delete the term "water-related" from this section.

The provisions of 90.58.020 recognize that uses beyond those that are strictly water dependent are appropriate shoreline uses as long as those uses that are water dependent are provided for and the other uses are consistent with control of pollution and prevention of damage to the natural environment. This is particular true where the use provides the opportunity for substantial numbers of people to access the waters of the state.

320(4)(d)(v)

The statement, "...significant ecological impacts" needs definition or more detailed explanation. Until the word "significant" is defined, this broad statement may lead to disagreement or misunderstanding. Change to: "Do not allow public access improvements that would degrade shoreline ecological functions."

The provision, like all use of the term "significant ecological impacts," requires application of factual information and professional judgement in determining if the impacts are significant.

320(5) Shoreline vegetation conservation

Aquatic vegetation in the form of microfauna including benthic algae is a critical component of the aquatic food web for threatened and endangered salmon species. We request that this section be re-labeled "AQUATIC and Shoreline vegetation conservation.

This section applies to vegetation along the shoreline. In-water resources are addressed in the Critical Areas sections 320(2)(c)(iii) and (iv).

320(5)(a) Shoreline vegetation conservation - Applicability

In the April 2000 draft of Part IV, this subsection was titled "Native vegetation conservation". In the current version, the section is titled "Vegetation conservation" and makes no mention of native vegetation. Reinstate "native" in the title and throughout the text as follows: "Identify important ecological functions that have been degraded through loss of native vegetation. . ." "While there may be less native vegetation remaining . . . the importance of this native vegetation. . ." "Identify measures to ensure that new development meets native vegetation conservation objectives."

Ecology removed "native" in most provisions for several reasons. It is not always clear exactly what non-native vegetation is. Also, non-native vegetation can sometimes perform important ecological functions.

320(5)(a)

Add a reference to RCW 90.58.150 as a reminder that this is a forestry policy that must be adhered to.

The provisions of RCW 90.58.150 are properly addressed in Section 340(3)(e).

320(5)(a)

Why doesn't vegetation conservation apply to forest practices and agriculture?

The Forest Practices Act establishes comparable vegetation conservation requirements. Limits on the application of rules to agriculture is a limit on addressing existing and ongoing uses, not new agricultural uses.

320(5)(b) Shoreline vegetation conservation - Principles

Amend this section on Aquatic and Shoreline vegetation conservation principles to add the following: "Vegetation conservation must follow the principles of integrated pest management which establishes a hierarchy of methods with chemical control the last method of choice. For aquatic and shoreland areas, chemical control is strongly discouraged. No waste discharge permit may be issued that does not quantify the amount of chemical that may be used during such applications."

The principles of Integrated Pest Management may be appropriate as a means of addressing a problem species in some locations but also may not be consistent with the policy and provisions of the guidelines or local SMP in other locations. Use of IPM is not precluded by the guidelines and as a general matter would be consistent in concept. Inclusion of specific water quality standards addressing the issue is not necessary in the Guidelines as it is addressed within the water quality standards for the state.

320(5)(b)

As part of system maintenance PSE routinely conducts an integrated vegetation management program on all our overhead electrical systems which includes an array of alternatives including tree trimming, tree removal, installation of tree wire, and application of chemical products, when appropriate. During emergency operations vegetation removal is both necessary and critical to the safety of our workers and the restoration of power. All of the actions are conducted primarily for safety of workers and the general public as well as fire prevention, and for the reliability of the electrical system. Currently, vegetation management within regulated shoreline jurisdiction is exempt as an allowable maintenance activity for a legally existing structure. The following principle needs to be added under part (b) to address this concern: "Routine and emergency vegetation management activities as part of utility corridor maintenance are necessary and appropriate. Local governments should adopt policies and guidelines that allow these vegetation management activities including the provision of adequate and appropriate vegetation replacement actions."

The provisions for conservation of vegetation are intended to preserve the natural character of the shoreline with respect to vegetation. While it may be that the local SMP will require a somewhat different approach to shoreline vegetation management by utility companies, it is not intended that measures necessary to maintain existing facilities or for public safety would be eliminated.

320(5)(b)

This section's wording provides no assurance that buffers will be adequate to achieve the requirements of the ESA.

Section 173-26-320(5)(d)(iv) sets minimum vegetation conservation areas for shorelines that effect species listed as Threatened and Endangered under the ESA.

320(5)(b)

Amend to clarify that the list of measures given here are not optional, that clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements and mitigation requirements must be part of any substantial management program. The wording in this paragraph makes it seems as if these measures are optional.

The section states that "Local governments may implement objectives through a variety of measures, where consistent with Shoreline Management Act policy…" The list of measures that follows indicates a range of approaches local governments may take in complying with the standards. However, local governments must comply with the standards described in section 320(5)(d) if they choose to follow Path B.

320(5)(b)

For areas that do not naturally support mature conifers, such as dunes and spits, other considerations are needed. For example, dunes and spits are very dynamic and contain sensitive plant species that are specially adapted to survive in such a harsh and mobile environment. These plants provide stability to the highly mobile sediments, but do not tolerate trampling. In addition, because dunes and spits are composed of unconsolidated sand and gravel, are prone to breaching, erosion, and rebuilding, and pose seismic hazards, they are not good sites for development (human health and safety consideration). Therefore, if the goal is to maintain and restore properly functioning conditions, all ecological processes and functions must be considered without bias.

This section includes the principle that "Master programs shall include provisions to protect and restore vegetation needed to sustain the ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion." Also see Critical area sections 320(2)(c)(iii).

320(5)(c) Relationship of shoreline vegetation to ecological functions

For vegetation protection, the rules should require local governments to inventory riparian areas and account for cumulative loss of riparian function along a riparian zone where infrastructure encroaches or other losses have occurred by requiring a replacement or mitigation of that function on nearby parcels under the same ownership or providing incentives to adjacent landowners.

The guidelines cannot be applied retroactively. In crafting SMPs, local governments are required to address cumulative impacts of development and restoration of shoreline ecological functions, including those provided by vegetation. See section 300(3)(d)(iii).

320(5)(c)

Wood debris provides for many more functions that are noted on the bottom of page 132. The language should be modified by either listing all of the functions that wood provides, or noting that the functions listed are not complete.

The language notes that the function list is not complete. The section begins with the phrase "The most commonly recognized functions of the shoreline vegetation include, *but are not limited to…*"

320(5)(c)

In paragraph beginning "Woody vegetation normally classified as trees" the Rule should identify, in the absence of trees, what standards would be applied to measure the adequacy of the width of a vegetated buffer.

Section 350(5)(d)(iv) establishes a minimum 60 foot "vegetation conservation area" for shoreline areas where trees don't naturally grow, if the shorelines affect T&E species.

320(5)(c)

There is a danger of large areas being designated as areas where trees don't naturally grow and thus existing vegetation providing important functions may be lost.

Local government must use all relevant information to substantiate the designation of vegetation conservation areas. Also, the lack of native trees will not be a justification for destroying other types of existing vegetation.

320(5)(c)

There is no buffer language in this update, however, the guidelines state that setbacks must perform the same ecological functions as the NMFS 4-d riparian zone, which is at least 250 ft.

The guidelines do not state that setbacks must perform the same ecological functions as the NMFS 4-d riparian zone. The standards section 320(5)(d)(iv) states that "master programs shall include vegetation conservation provisions to provide the ecological functions necessary to the survival and recovery of T&E species." The guidelines require that local governments set specific standards based on the setting.

320(5)(c)

The proposed standards are not sufficient to reasonably minimize the risk of ecological degradation and impairment of PFC for PTE species. There is little scientific basis for the statement that for riverine shoreline environments under the jurisdiction of the SMA "achieving the full suite of vegetation-related shoreline functions requires a vegetated area of one mature site potential tree height in width, measured perpendicular from bank full width or [the] outer edge of the channel migration zone.". The SMA applies to all shoreline bordering Type 1 waters of the state, which by definition includes rivers and stream greater than 20 cfs mean annual flow. Riparian areas along large streams and rivers in western Washington are among the most productive forestlands in the state, where "the full suite of vegetation-related shoreline functions" are only achieved under riparian buffer widths of 200-250 feet measured perpendicularly from the bank full channel edge (see recent review by Pollock and Kennard 1998).

In order to achieve "the full suite of vegetation-related shoreline functions", one mature site potential tree height as a buffer width for riverine shorelines is inadequate according to the scientific literature available. If the objective is to provide only specified functions (i.e. pollutant removal), and not the full suite of vegetation functions, this recommendation might be adequate. The assumption here is that one mature site potential tree height equals approximately 200 feet.

As defined under these guidelines, SPTH refers to the height achieved by mature Douglas fir or hemlock trees at age 100 (dependent on site class productivity, see comments above), which will not be adequate for maintenance or restoration of the full-suite of riparian functions and PFC along rivers and streams that provide habitat for PTE species. Similarly, there is absolutely no basis for the statement "that for marine shorelines where trees naturally grow, achieving the full suite of vegetation-related shoreline functions requires approximately one half the height of a mature native tree measured from ordinary high water mark (emphasis added)." A recent review by Desbonnet et al. (1995) observed that many of the same functions provided by riparian forests along streams are also important along marine shorelines (e.g. bank stabilization, shade, organic material inputs, pollutant removal, etc.).

Furthermore, recent work by Fresh et al. (1981) and Pentilla (2000), indicates that there are likely other under-appreciated functions and values of marine riparian forests. Until more is known about the values and functions of marine riparian forests, it is prudent to adopt a conservative strategy, especially given the intensity of land use typical along developed marine shorelines (e.g. residential development with failing onsite septic systems).

Building and development setbacks should generally incorporate or be based on the buffers that are required to protect shorelines. It needs to be clarified that setback/buffer areas are not available for use or development activities that degrade shore resources, such as buildings, parking areas, accessory structures, hard-surfacing, septic drainfields, and the like. These areas, especially along salmon streams or adjacent to other habitats for species of concern, or adjacent to municipal water supplies, should be substantially maintained in native vegetation, with minimal clearing and alteration for views or other public or private enjoyment (for example, buffers should not be substantially cleared and turned into to lawns or tennis courts). Motor vehicle parking should be kept well away from the shoreline.

Ecology's review of scientific and technical information on this subject indicate these standards are appropriate and reasonable. The guidelines state that "In establishing vegetation conservation regulations, local governments must use all available scientific and technical information, as described in WAC 173-26-300(2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department."

320(5)(d)(iv)

What is the difference between a buffer and a setback? Most ecological functions are in someway tied up with vegetation management. What is the distinction between a vegetation management zone, a buffer, and a setback? The rule still needs to clarify what each of these terms mean, and where they are to be applied.

A buffer is an area set aside in a relatively natural condition that protects

the ecological functions of the shoreline or wetland area. A setback is typically a requirement related to the location of structures and does not necessarily incorporate protection of the existing vegetation.

320(5)(d)(iv)

The provision that allows local governments to determine the applicability of ecological functions leaves the door open for them to argue that certain functions be ignored, and gives Ecology some discretion to make that judgment. We object strongly to language in 5(d)(iv) which creates a blanket exemption from the standards. This language is found in two places. First, in the second paragraph of (d)(iv), you state that : " local governments shall address the following functions unless they are shown to not be applicable for a particular shoreline." This language opens the door to tremendous debate and, ultimately, litigation, over whether a given function is "applicable" to a given shoreline. It would be far better to define the functions you are seeking to protect for given shorelines, as you have done to a certain extent in the "ecological functions" definition, and leave it at that.

The language in the third from the last paragraph states that minimum standards may be altered where it is demonstrated the functions are not important for a given shoreline "or where the functions are provided by other means." "Other means" could be just about anything, including off-site mitigation. We urge Ecology to remove these references or, at the very least, narrow the scope of the exception. It is not at all clear who will make this determination and what level of proof is required.

Regarding the Shoreline vegetation conservation standards, we are concerned that this section establishes minimum vegetation conservation provisions (d)(iv) and then allows local governments, on their own, to alter this minimum standards (d)(iv). This is unacceptable and this language should be deleted. There should be no exception to requiring the minimum vegetation standards.

The statement that "local governments shall address the following functions unless they are shown to be not applicable for a particular shoreline…" does not allow local governments to ignore important functions. It simply states that they don't have to address functions where they do not exist.

The rule also states that "minimum standards may be altered where it is demonstrated through scientific and technical information that certain vegetation functions are not important for properly functioning condition or where the functions are provided by other means." This also provides a necessary degree of flexibility. In all cases, local governments have to show how they used scientific and technical information to derive their standards.

320(5)(d)(iv)

Is WSF required to mitigate for the removal of vegetation as part of a maintenance activity? Is mitigation required for all occasions?

Mitigation is not required as long as ecological functions are maintained.

320(5)(d)(iv)

Under the heading "shoreline vegetation conservation," the new guidelines address what is commonly known as "buffers." The new guidelines treat buffers differently under Path A and Path B. Under Path A, the local governments are left to develop methods, including setbacks and clearing and grading standards, which "implement the principles of [vegetation conservation to protect properly functioning conditions]." Under Path B, the buffer requirement is set at one site-potential tree height (SPTH) for naturally forested areas, sixty (60) feet for unforested areas, and one-half SPTH or one hundred (100) feet, whichever is greater, for marine and lake shorelines.

The difference between the two paths is intentional and specifically intended to provide the certainty that ESA listed species will be protected.

320(5)(d)(iv)

Many commentors wrote in opposition to or in praise of specific-sized buffers, or to challenge the scientific basis for the default conservation areas. For example:

The 200 ft setbacks combined with the wetland, GMA, and floodplain regulations basically include all of Aberdeen that is not in the hills.I am very much in favor of your proposed setbacks of 200 feet as buffers. I am strongly opposed to increasing the current 200 ft shoreline and wetland setback to 600 ft. This is junk science. Several university studies completed a study that proves beyond a doubt that a 50 ft buffer is sufficient. Why consider 200 ft setbacks when environmental biologists concede that 50 to 100 ft will preserve habitat? The rule must prohibit encroachment by development. 250 ft setbacks in our county is reasonable. I oppose the 100 ft setback for marine waters.

Do not allow removal of native vegetation? No landscaping allowed? Why not just kill off all the people and give the land back to nature? Jon Johnson, Ph.D. says in an editorial that the buffer requirement in the 4D rule, which is also Path B of your guidelines proposal, are based on forest science, and can't be applied to lowland areas.

There are many examples where two streams that look identical crossing the same piece of property have different temperatures. One is fed by ground water, another comes from runoff from developments upstream. So the types of solutions that you would use in places like that can be totally different.

DOE based its proscriptive standards on the same materials as the WDFW did in its "management recommendations," as evidenced by the complete incorporation of the WDFW document by reference into the DEIS which accompanies the new proposed SMA guidelines and by the specific directive in both paths to achieve the vegetation characteristics described in the WDFW document. The standards for buffers set forth in the new administrative rule (in both paths), are vastly overprotective and unnecessary to save fish. The agency should revisit these standards using accurate science specifically derived from watershed and stream-specific research. DOE should either collect and analyze this data itself, and thus serve as a resource for local governments, or assist local governments with funding to support their own research. The local governments could then support their own determinations regarding appropriate buffers with the best available science.

Both paths incorporate the equivalent of a "best available science" rule for developing local programs, requiring local governments to "identify and assemble the most current, accurate, and complete scientific and technical information available to the issues of concern." Both paths privilege the "technical assistance materials" provided by Ecology. However, these materials, which have been put together by DOE in conjunction with other state agencies, have been criticized as not consisting of the best available science and being vastly overprotective, both as to sediment control and large woody debris recruitment. See the statements and letters by James W. Buell, Ph. D., before Mason County's Planning Commission and Council, and the Kitsap County Council, criticizing the WDFWs Management Recommendations for Washington's Priority Habitats: Riparian, and also criticizing the National Marine Fisheries Services' "Factors for Decline" and proposed 4(d) rule.

These criticisms have been echoed by Jon D. Johnson, Ph.D., an associate professor of natural resource sciences at WSU's Puyallup Research and Extension Center. See the story "Not much salmon research has been done on lowland stream buffers"(The News Tribune, Tacoma, July 2, 2000). See also the comments of Ron Thom of Battelle

Memorial Institute's Marine Science Laboratory in the article "Study needed to find balance between salmon, buffers"(The Sun, Bremerton, June 13, 2000). (Thom: "The honest answer is that nobody really knows the difference between 35 and 100 feet, because nobody has done the studies to provide the answer.")

It is not at all clear that the proposed management zones (in some case 60 to 100 feet), even if they were buffers, are adequate to protect water and fish. We suggest that Ecology provide peer reviewed scientific documentation that such an approach will protect waterways and their associated environmental benefits.

The guidelines should be modified to require new development and/or clearing and grading to be located fully outside of the vegetation conservation areas. The standard as it is written will foster site-specific and cumulative impacts to riparian areas. Wider buffers should be encouraged, kept relatively natural, and be tied to setbacks.

This section is vague and does not offer certainty for local jurisdictions, or the Services (NMFS, USFWS). Minimum standards need to be specified by the State for a consistent understanding and application of vegetation buffer widths. The scientific support on riparian buffer functions is clear and abundant. There are literally hundreds of articles and dozens of books written on the subject of riparian buffer zones (Wenger, 1999). Although many approaches have been taken in establishing riparian management zones, most set a minimum width with additional setback requirements for steep slopes. Using one, or one half site potential tree height where trees naturally grow, and sixty feet where trees do not naturally grow, are buffers that are not supported by science and do not achieve properly functioning conditions.

Buffer width considerations should include amount of remaining riparian zone along specified reaches of shoreline, impervious surface limitations, and connectivity within and between reaches. As a part of the Tri-County Salmon Recovery Response, a technical workgroup is developing a riparian management zone proposal that might be helpful in developing a management strategy for the State.

We object to the "vegetation conservation zone" for marine areas, which is set at "100 feet or one-half site potential tree height, whichever is greater." Recent studies of marine ecosystems have indicated that, even if this entire "conservation zone" was off limits to development, it would still be inadequate to protect the ecosystem, including threatened salmon species . We suggest that you amend this section to create a management zone equal to "one site specific tree height or 100 feet whichever is greater." We also would suggest that you reference sections of the rule which refer to setbacks to maintain slope stability to ensure that those reviewing the rule evaluate both issues when establishing setbacks.

Section (5)(d)(iv) effectively prohibits building within the 100 ft setback of an urban lot if there are trees or other vegetation. This rule is apparently imposed without any scientific data to show it does anything to maintain or restore PFC or PTE species.

For marine shorelines and lakes, part (d) of this section, the recommended buffer is only one-half the height of a mature native tree. This proposed buffer width is not supported by the scientific literature and is insufficient for achieving properly functioning conditions. It is our understanding and belief that riparian zones perform the same functions (as listed in this section), regardless of whether the water body they are adjacent to is fresh water or saltwater. Desbonnet, et al., 1994, argue that the functional mechanisms that apply to inland (i.e. riverine) riparian buffers should be similarly applied to coastal buffers. They point out that marine and fresh water riparian zones serve almost identical purposes, including pollutant removal, soil stability, stormwater control, and provision of wildlife and fish habitat. Therefore, it makes no sense to have a reduced buffer adjacent to saltwater and lakes. It is true that most riparian studies have focused on riverine systems.

However, the studies that have focused on marine shorelines not only support similar findings as those found in fresh water riparian studies, but indicate that there may be additional functions specific to marine biota. For ex., Penttila (in review) recently found a significant difference in surf smelt egg mortality between shaded and unshaded spawning beaches. Cordell (pers. comm.), and Fresh, et al., 1981, have found that terrestrial insects from riparian vegetation are a major prey item for juvenile Chinook salmon in the nearshore. Until we learn more about the full suite of marine riparian functions, we should rely on existing information and provide buffers that protect marine shorelines in Puget Sound from additional degradation. Preventing additional losses is both critical and cost effective. Once the riparian zones are lost, they are difficult and expensive to restore, if restoration is possible at all.

The requirement in Path B for vegetation conservation is that local governments "establish provisions to protect and restore vegetation-related functions affecting PFC." The rule does not prohibit all vegetation removal. It does not create a no-touch, no-use buffer. It is intended to preserve important functions. Ecology believes reasonable use can be made in these areas while still protecting ecological functions.

The intent of vegetation conservation is "to protect existing and restore degraded habitat so as to contribute to ecological functions, including PFC, and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses."

Scientist who have studied the issue of buffers disagree on the precise distances that are necessary in different situations. Not all of the studies have focused on forest settings though there has been more work related to forestry issues than in other settings. Based on our review of scientific studies, Ecology believes that the standards established provide a reasonable likelihood of success in protecting the functions of the shoreline while not unduly limiting property use. The provisions of the guidelines also allow consideration of other or new scientific information by the local government and development of appropriate standards that properly protect shoreline functions.

Regarding requirements related to the "technical assistance materials" provided by Ecology, the only requirement regarding Ecology's technical assistance materials is that it be obtained and included in the local government's consideration.

320(5)(d)(iv)

Part IV would require 100 foot setbacks in many areas, homes within setbacks will be nonconforming, nonconforming structures may not be rebuilt if damaged over 50%, & most lots are too small for a home and a 100 ft setback. These rules, over time, are a defacto condemnation of homes.

100 ft setbacks will render many lots unbuildable. Please explain how we can build a house on our 100 foot deep, forested lot when the rule requires a buffer of 1/2 SPTH or 100 ft, whichever is greater. The 100 ft setback and 10% impervious surface restrictions will make our lot at Ocean Shores unbuildable and useless.

Bullet #3 requires that setbacks be established by calculating half of the potential tree height based on the soil type. This would create great confusion for

property owners and staff and would be awkward to administer. Since shoreline environment designations are not based on soil types, the result could be a number of different setback requirements within the same community that is already platted. Where there is a string of 60 foot wide lots that is already heavily developed, if we were to explain to them that their neighbor has a different setback than they do because the soil type would allow for a different size tree as compared to their lot, especially when the entire community is already cleared, graded, bulkheaded and developed, citizens would understandably be confused as to the methodology of determining the appropriate setback and would not consider this a fair regulation.

☒ The provisions of 173-26-320(5)(d)(iv)(last bullet) include specific direction to local government addressing existing lots and existing residential uses. The rule states that "where the dimensions of existing lots or parcels are not sufficient to accommodate permitted primary residential structures outside of the vegetation conservation area, apply the mitigation sequence in WAC 173-26-020 to minimize ecological impacts. Generally, this will mean placing the development away from the shoreline as far as possible, locating the development to avoid tree cutting, and modifying building dimensions to reduce vegetation removal."

The intent of these provisions is specifically to assure that local government is not required to create an SMP that make all residential lots or existing residences within the vegetation conservation areas non-conforming.

The 10% impervious surface provisions apply to the Rural Conservancy environment which is unlikely to be applied to Ocean Shores because it does not meet the criteria for designation as such.

320(5)(d)(iv) VCA, 1st bullet (Riverine areas)

Positioning of the vegetation buffers is quite onerous in nature. If we consider the topographical layout of Skagit County, what is proposed is ludicrous. Requiring buffering starting at 3 feet above the 100- year flood plane and then suggesting the buffer be 60 to 200 feet would exempt a good portion of Skagit County from any sort of development.

Measuring buffers from the channel migration zone will include entire valley floors in some areas. This will take 60 or more acres of our land from our use. Who will compensate us for this taking, and the taxes we will continue to pay on that land? Path B requires buffers that vary from 60 feet to 200 feet. Path B buffers are added to the "channel migration zone," an area that can include entire valley floors. Even if you are allowed in the buffer zone, you will have to do work to restore shorelines to a pristine condition or recover struggling salmon stocks.

☒ The vegetation conservation requirements generally applicable to rivers are measured from the channel migration zone boundary or bank full width. This boundary would generally fall below the 100 year flood elevation. While there is a substantial amount of variability in the width and character of the CMZ among river systems, it is highly unlikely that it would encompass the entire 100 year floodplain. Bank full width is defined as the 1.5 year flood level.

320(5)(d)(iv) VCA, 1st bullet

Our cattle graze on diked tidelands. There is a ditch or slough every two to three hundred feet from one end of the ranch to the other. If you people create buffers on all the surface water on our ranch, we would be reduced to a single cow trail in the middle of the ranch and that would be the extent of it. We cannot operate with buffers of any kind.

☒ Existing and ongoing grazing operations would not be required to establish buffers on land currently used for that purpose under the provisions of the guidelines. See section 220(5)(a) and 320(5)(a).

320(5)(d)(iv) VCA, 1st and 2nd bullet

Windthrow should be accounted for and protected against with buffers through incentives if necessary throughout the riparian areas and under adaptive management.

☒ The vegetation conservation area in riverine settings is adequate to account for windthrow. It is specifically identified in provisions for lake and marine shorelines because of the smaller minimum width.

320(5)(d)(iv) VCA, 2nd bullet

The phrase "where trees naturally grow" is not well defined. Some might argue that trees do not "naturally grow" in a heavily urbanized area despite the fact that, historically, they were present. We urge you to remove the phrase. Please clarify that this vegetation conservation area designation will not be applied to urban areas where trees have historically grown but have been removed due to development.

☒ Any determination will require demonstration that scientific and technical information was used.

320(5)(d)(iv) VCA, 2nd bullet

Douglas PUD would be obligated to provide shoreline vegetation in widths of no less than 60' and possibly up to 100' for any required shoreline permit. Projects proposed for reservoir operations must be conducted on Douglas PUD property. Most locations on the reservoir do not have adequate property depths to site this vegetation standard. The Wells Project is also found in an arid, desert climate. Within a few feet of water's edge, riparian vegetation is replaced by desert shrub steppe vegetation. Desert climatic conditions impose many restrictions on growth patterns of riparian vegetation. Such conditions include the need for constant application of irrigation water to vegetation growing beyond the reservoir's water table. Obtaining a permanent water right from the DOE would be required to maintain an artificially produced shoreline riparian zone in the required width.

☒ The provisions address the conservation of existing vegetation and restoration where appropriate in conjunction with new development. Requirements for restoring vegetation would be applied within property controlled by the applicant for a permit. The intent is to restore native or similar vegetation that would not require extensive irrigation, not to induce an artificially produced riparian zone where it does not belong or is not self sustaining.

320(5)(d)(iv) VCA, 2nd bullet

For shorelines where trees do not naturally grow, a 100-ft buffer is still appropriate, since in arid areas, riparian zones are more fragile and recovery times are longer.

☒ In arid climates the transition to upland vegetation adjacent to lakes is often very rapid. A 100 ft. conservation area is not clearly better than a 60 ft. area in such circumstances, in terms of benefits to ecological functions.

320(5)(d)(iv) Minimum standards, all

The provisions on this page will apply only if local governments adopt the environment designations set out in WAC 173-26-310. If local governments concoct their own environment designations than these "minimum standards" would not apply. This is another reason why local governments must not be allowed to generate their own environmental designations. In

addition, it makes no ecological sense to provide less wetland protection in a "high-intensity" environment than in a "rural conservancy" environment. Minimum standards should apply to all shorelines of the state, regardless of environment designation, which is a use matrix, not a biological divider.

☒ Ecology has revised the rule to address this comment. The first sentence of each bullet addressing the standards for the various shoreline environmental designations has been amended to add the following phrase: "or where criteria for the ["natural," "urban conservancy," etc.] environment in section 310(5) apply."

320(5)(d)(iv) Minimum standards, all

The standards developed for the various shoreline environmental designations are meaningless relative to riparian management and PFC's. Phrases such as "allow no significant vegetation removal"... "except for..."; "provide the maximum natural vegetation strip feasible"; and, "minimize significant vegetation removal" are meaningless without specified buffer widths that are established from riparian function goals. These guidelines offer no established baseline and can only result in inconsistent application by local jurisdictions and inadequate protective standards. Riparian processes and functions currently have little relationship to shoreline designations. If the goal is to provide increased protection in "Natural" shorelines, then increase the buffer width from a baseline.

For "Urban" shorelines, work from an established baseline for new development and recover, or restore riparian zones, as they become available. Preservation, enhancement, and restoration should be used as tools in all shoreline designations to achieve PFC's. These recommendations are consistent with other parts of this chapter (i.e. 173-26-400(d)).

☒ Ecology does not believe the standards for the shoreline environmental designations are meaningless. The section states that "master programs shall include provisions to implement the following minimum standards within the areas described above except as noted." It is appropriate to connect vegetation conservation requirements to planned uses and densities. The structure of the SMA is predicated on local governments' tailoring programs to local circumstances.

320(5)(d)(iv) Minimum standards, 2nd bullet

In the second bullet on this page, RCW 90.58.150 should also be referenced in addition to the reference to the Washington State Forest Practices Act.

☒ The provisions of RCW 90.58.150 are properly addressed in Section 340(3)(e) and need not be referenced here.

320(5)(d)(iv) Minimum standards, 2nd bullet

The SMA should provide for maximum sized buffers for forest practices.

☒ Ecology believes the Forest Practices Act, its rules, and the Forest and Fish Report provide appropriate buffers for forest practices.

320(5)(d)(iv) Minimum standards, 3rd bullet

3rd bullet In the first sentence, the phrase "no significant removal" is not defined and extremely vague. Amend this section so that it reads "allow no significant vegetation removal" a term which is defined in this rule. We object to the fact that this standard is limited to "native" vegetation. While we prefer to see native vegetation in these areas, there are many non-native plants and trees which are providing important ecological functions in these areas. The term "native" should be deleted. The second sentence stresses protection of native vegetation rather than vegetation providing ecological functions. The second sentence seems to offer a choice between restoration of degraded areas and protection of existing vegetation. We urge you to not allow this as an option. The "or" should be replaced by "and". We need to preserve existing vegetation and restore degraded areas if we are to achieve the goal of salmon recovery. Finally, you indicate that the principles established in "(b) and (c) of this subsection" will be achieved through a "restoration plan". While restoration will be a very significant element of the recovery effort in high intensity environments, it is not the sole factor. We strongly suggest you substitute the phrase "by maintaining existing vegetation where necessary and through a restoration strategy..." in place of the current language "through a restoration strategy..."

☒ This provision applies to the "high intensity environment." This designation is intended to be applied to shoreline areas "within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070, if they currently support or are suitable and planned for high-intensity water-dependent uses related to commerce, transportation, or navigation."

Ecology expects that in these areas much of the vegetation would be non-native and not performing significant ecological functions. Therefore, to restore vegetation is a better option. The provision is specific in not allowing significant removal of native vegetation where it does exist (except for water-dependent uses).

320(5)(d)(iv) Minimum standards, 3rd bullet

If vegetation is removed for water-dependent uses in the "high-intensity" environment, then these developments should have to mitigate for impacts to vegetation.

☒ The rule states that "Because of the importance of shoreline vegetation to PFC, even in intensely developed urban settings, master programs shall implement the vegetation conservation principles described in (b) and (c) of this subsection through a restoration strategy based on the ecological characterization and analysis described in WAC 173-26-300(3)(d)(i). The strategy shall give special emphasis to those functions necessary to PFC for T&E within the particular reach of the shoreline."

320(5)(d)(iv) Minimum standards, 4th bullet

In the fourth bullet on this page, we are opposed to allowing nonwater-dependent uses in the "urban conservancy" environment. Nonwater-dependent uses are not in compliance with the goals and policies of the SMA.

☒ As described in 310(5)(e), the urban conservancy designation is designed for "shoreline areas appropriate and planned for development that are *not generally suitable for water-dependent uses* and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "rural areas of more intense development (emphasis added)."

Ecology believes the standards assure that uses in the urban conservancy designation will be consistent with the SMA and incorporate appropriate levels of ecological restoration and public access.

320(5)(d)(iv) Minimum standards, 4th bullet

For the "urban conservancy" environment, remove "as a general rule" in the sentence

"As a general rule, provide the maximum natural vegetation strip feasible along the shoreline." Retain language that prohibits the removal of native vegetation for replacement with lawn or non-native plant material for properties within areas planned for residential development. All statements in the standards section that include "vegetation" should be changed to "native vegetation".

Ecology believes the phrase "as a general rule" provides necessary flexibility. Non-native vegetation, especially in urban areas, can provide valuable functions.

320(5)(d)(iv) Minimum standards, 4th bullet

4th bullet This standard is flawed. It is unclear where these areas will be located (see comments on "Designating Environments" above). We support the requirement that nonwater-dependent uses do restoration on "degraded sites," the term "degraded sites" is not defined and could contain valuable existing vegetation.

The principles section requires that valuable existing vegetation be retained [see section 320(5)(b)].

320(5)(d)(iv) Minimum standards, 4th bullet

4th bullet We suggest you add the phrase "and allow no significant vegetation removal" at the end of the first sentence of the bullet on "urban conservancy" areas. Water dependent uses should be required to do more than simply mitigate harm.

The purpose of the standard is to implement the preference for water-dependent uses while preventing significant ecological impacts. The first step in the mitigation sequence is to avoid impacts.

320(5)(d)(iv) Minimum standards, 5th bullet

135, 5th bullet We strongly support the standards, particularly those which would encourage setbacks outside the vegetation conservation zone and would require modification of the building dimensions to reduce vegetation removal.

Comment noted.

320(5)(d)(iv) Minimum standards, 6th bullet

Even if a city or county favors limited development in the "rural conservancy," "urban conservancy," and "shoreline residential" environments, such development is prohibited if it "will have significant ecological impacts to PFC for PTE species."

New development in "rural conservancy," "urban conservancy," and "shoreline residential" environments is absolutely prohibited if it impacts properly functioning condition. If a home is allowed, then trees cannot be cut down or a lawn added. (p. 135) In fact, the house dimensions will be severely restricted to avoid vegetation removal. (p. 135)

Protection of PFC for T&E species is a primary purpose of Path B. Therefore, uses are significantly limited where they have significant ecological impacts on T&E species. This section sets a framework for how reasonable use can be accomplished while preventing significant ecological impacts.

320(5)(d)(iv) Minimum standards, 6th bull.

In the last bullet on this page, please amend the first sentence as follows: "For SINGLE-FAMILY RESIDENCES within areas planned for residential development. Please amend the second sentence as follows: Where the dimensions of existing lots or parcels are not sufficient to accommodate permitted SINGLE-FAMILY RESIDENCES outside of the vegetation conservation area. . . ." We are very supportive of the emphasis placed on avoidance and placing development away from the shoreline as far as possible. This is a concept that must apply to all development, not just single-family residential development.

Also, in section 320(5)(d)(v), amend the first sentence in this section as follows: "For SINGLE-FAMILY RESIDENCES [Delete - and other nonwater dependent uses] do not allow the creation of lots that will require significant vegetation remove. . . ." Nonwater-dependent uses are not in compliance with the goals and policies of the SMA.

Ecology believes the provisions are properly applied to all residential uses.

320(6) Water quality, storm water, and nonpoint pollution

Standards to protect water quality and prevent stormwater and non-point pollution impacts are not sufficiently specific or detailed. Stormwater management should be mandated at the individual parcel level and tight-lining of seepage along steep slopes adjacent to marine shorelines should be prohibited. This practice is common in areas where waterfront property owners are seeking to prevent natural hillslope failures, but we lack a precise understanding of how this practice impacts groundwater flows, which may be important for baitfish spawning in the upper intertidal.

Add the following to the Water quality, storm water, and nonpoint pollution Standards section: "(iv)" Toxic chemicals listed in "Chemicals of Special Concern in Washington State" (Ecology, July 1992, 92-66) shall not be used in shorelines of the state or aquatic areas.

Ecology believes the broad, performance based provisions are sufficient to ensure implementation of other applicable regulations and standards.

320(6)

Stormwater runoff from outside SMA jurisdiction must be addressed in this rule.

The impacts of stormwater from shoreline development and from facilities located in shoreline jurisdiction is addressed by the regulations. The jurisdictional limits of the SMA limit the ability of the regulations to effectively address stormwater generally.

320(6)(c)(i)

Unclear or vague: The statement "significant ecological impacts" is confusing and hard to interpret. How do local communities know what counts as an " ecological impact" and when impacts are determined, what constitutes a "significant" amount?

The definition of significant ecological impacts is found in 020(47).

320(6)(c)(ii)

Where you discuss establishment of a policy regarding land use and stormwater policies and ordinances, we urge you to delete the term "or contribute to the attainment of ." The term "contribute" can simply mean incremental progress towards PFC to the point of being virtually meaningless.

It is not reasonable to expect that SMPs will in all cases be able to accomplish "attainment" of PFC for T&E species. Losses to habitat have been incremental over a long time, and improvements, too, will likely come slowly. SMPs will contribute to the goal of incremental progress.

330(1) Shoreline Modifications - Applicability

States that "application of chemicals that constitute significant vegetation removal" is considered a shoreline modification. In section (2) Principals, item (h) it further states that

master programs shall "prohibit the use of materials with toxic effects...". PSE's Integrated Vegetation Management Program does include the limited use of herbicides to control vegetation along utility corridors. We understand that the 4(d) rule, as currently written, implies that NMFS will expect limitations on use of herbicides within critical habitat. However, the SMA should not prohibit appropriate herbicide use.

☒ The purpose of Path B is to be consistent with the requirements for ESA compliance and therefore can be expected generally to parallel section 4(d) rule requirements. If the application of chemicals is done in accordance with state and federal law and does not result in damage to the resources and ecology of the shoreline then it is likely that local master programs will not prohibit such activity. They must, however, address it.

330(1)

The word "encouraged" must be removed from this section. It should be required that local governments distinguish between shoreline modifications and shoreline uses. Should be changed to: "Local governments shall prepare master program provisions that distinguish between shoreline modifications and shoreline uses."

☒ Local governments have latitude to design provisions in any manner they wish provided that the intent and purpose of the guidelines is carried out. The use of the word "encourage" is appropriate in this context.

330(2)(a)

Allow structural shoreline modifications only where demonstrated to be necessary to support or protect a legally existing or allowed development... Inconsistent message: elsewhere (page 152), structural shoreline modifications in non-existing (allowed) development are prohibited. Strike "allowed development" from this section to clarify the intent and remain consistent.

☒ Section 340(3)(j) addresses only residential development, whereas this provision relates to all development. Certain allowed uses, other than residential, may require structural shoreline modification in order to function. This provision assures that where that is the case, ecological functions are protected.

330(2)(a)

It is critical that shoreline enhancement projects be allowed on their own merit without necessarily supporting a permitted use. This will provide an incentive to undertake projects to increase shoreline functions and encourage community participation. This is of particular importance for habitat recovery projects.

☒ Ecology has amended the rule to address this comment. The rule includes a new section 330(3)(g) "Shoreline habitat and natural systems enhancement projects." The section reads:

"Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.Master programs should include provisions fostering habitat and natural system enhancement projects. Such projects may include shoreline modification actions such as modification of vegetation, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. Master program provisions shall assure that the projects address legitimate restoration needs and priorities."

330(2)(a)

This section appears to mean that existing WA State Ferries structures cannot be protected by shoreline modification unless the development maintains or improves ecological functions necessary for the attainment of PFC. There may be no area within WSF's control to accommodate such a requirement, which may result in the loss of WSF property and operation.

☒ Existing uses that are not proposing development can be maintained. Any required mitigation must be reasonably achievable including control of the necessary property.

330(2)(d)

Missing key idea: The following sentence from Path A includes important information, but failed to be included in Path B. "For example, in normal circumstances, preference should be given to pile supported piers, which allow normal water flow, rather than piers constructed with fill, which alter the normal flow of water currents."

☒ Ecology has amended the rule to address this comment. The rule reads: "For example, in normal circumstances, preference should be given to pile-supported piers, which allow normal water flow, rather than to piers constructed with fill, which alter the normal flow of water."

330(2)(d)

Change sentence to read: Give preference to those types of shoreline modification that have a lesser impact on ecological functions or result in progress toward attainment of PFCs.

☒ The proposed revision does not add substantively to the provision. The phrase "result in progress toward" is substantively equal to "contribute to the attainment of…"

330(2)(e)

The statement "where applicable" is vague and unnecessary. Should be changed to: "Base provisions on scientific and technical information."

☒ Not all shoreline jurisdictions have marine waters and thereby the phrase "where applicable" is appropriate.

330(2)(f)

The statement "all feasible measures" does not provide enough information. Delete "feasible" or include a reference to where these feasible measures can be found.

☒ It is necessary and reasonable to consider feasibility, as the term is defined for the purpose of the guidelines, in determining measures to restore ecological functions. The criteria and purpose for doing so are established in the guidelines.

330(2)(h)

The statement "do not allow construction and site development techniques that may affect PFC and other ecological functions" is vague and subjective as to which techniques may be used. What would be expected of project proponents in terms of demonstrating that their methods do not affect PFC?

☒ The statement is intentionally broad and allows varied interpretation to suit local circumstances. The overall meaning is sufficiently clear. Techniques will change over time as our understanding of such process develops.

330(2)(h)

Add the following to Shoreline modifications, subsection (h): "Toxic chemicals listed in "Chemicals of Special Concern in Washington State" (Ecology, July 1992, 92-66) shall not be used in shorelines of the state or aquatic areas."

☒ Ecology respectfully declines this suggestion; we believe the present language in this subsection is sufficiently detailed.

330(3)(a)(i) Shoreline stabilization - Applicability

The "applicability" subsection provides a much-needed explanation of the impacts of hard armoring and the alternatives available. We also appreciate the inclusion of definition of maintenance and repair. In general, this section is a vast improvement over previous versions. King County DNR has been evaluating what is known about the nearshore environment and has identified shoreline armoring and bank stabilization practices as a key stressor in the nearshore ecosystem. Therefore, it is essential that the language in this section set standards that reduce or eliminate this stressor.

Comment noted.

330(3)(a)(i) 2nd para

Recommended Language: Nonstructural methods include building setbacks, relocation of the structure to be protected, groundwater management, surface water management, vegetation management, planning, and regulatory measures to avoid the need for structural stabilization.

Ecology respectfully declines this suggestion; we believe the present language in this subsection is sufficiently detailed.

330(3)(a)(i) 2nd para

Make clear that there is a priority for nonstructural shoreline stabilization over structural measures.

Ecology does not believe the suggested additional emphasis is needed, as the standards include the requirement that "soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses."

330(3)(a)(i) range of measures

Replace first measure for "soft" structural measures with "Revegetation with, or enhancement of existing, native riparian plant species". To the statements on adverse effects of shoreline armoring, add "rearing habitat for salmonids and forage fish" to the discussion of Habitat Degradation.

Revegetation is covered under the broader rubric of "vegetation enhancement." Degradation of "spawning habitat for salmonids and forage fish" is specifically mentioned, as is "Loss of rearing habitat for juvenile salmonids." Ecology believes the discussion of adverse effects of shoreline armoring is sufficient.

330(3)(a)(i) Problem list

The proposed regulations are very specific about typical or intended degradation of bulkheads and threats to the environment, but you also have to take into account and understand that the situations are unique. With regard to effects of bulkheads, you depict a worst-case scenario as a general condition - and you need to revisit that. Big waves in the wintertime takes sediment off shore. Small waves in the summertime bring it back on shore. Each area is unique and is more governed by the topography and the geography of the land than it is by what happens to be on the shoreside whether it's a bulkhead or native shore or whatever.

The list of problems caused by bulkheads indicates that it is a list of typical, not universal impacts. Because each circumstance is unique, the provisions of the section require that the geohydrological and biological circumstances be studied before decisions on need and design are made.

330(3)(a)(i) Problem list, 2nd bullet

Recommended Language: Habitat displacement/degradation: The placement of erosion control structures typically displaces physical habitat (i.e. the footprint of the structure) and degrades ecological processes and functions due to habitat alterations. Examples of lost functions include loss of riparian vegetation functions, spawning habitat for Sockeye salmonids and forage fish, reductions in juvenile salmon feeding, refuge, and migration corridor habitat functions.

Ecology respectfully declines this suggestion; we believe the present language in this subsection is sufficiently detailed.

330(3)(a)(i) Problem list, 3rd bullet

Third bullet, last sentence: Remove "other" since bull trout is not a salmonid.

Ecology has amended the rule to address this comment. The rule reads: "Forage fish provide food for bull trout and ~~other~~ salmonids in the marine environment."

330(3)(a)(i) Problem list, 9th bullet

In this section there is reference to large woody debris necessary for PTE in the water. Yet Larry Fisher of the WA Dept of Fish and Wildlife has told construction companies that he will not issue an HPA for a project with large woody debris. This points out the inconsistencies in various government agencies and proves that more definitive science is needed before recommendations and policy can be made.

Comment Noted.

330(3)(a)(i) Problem list, last bullet

The last bullet should be changed to "Loss of habitat for fish and wildlife". Shoreline armoring impacts more than rearing habitat for juvenile salmonids.

Ecology respectfully declines this suggestion, as the general impact to habitat is addressed in other bullets.

330(3)(a)(i) Repair, replacement

...the replacement of less than twenty percent of the original structure. Clarify: It is necessary that a time frame is specified within which the homeowner must complete the permitted activity, such as a repair of greater than 20% within a 7 year period. Without specificity, a homeowner could repair 18% per year until 90% is repaired.

Replacement of more than 20% would be governed by the requirements concerning replacement. The rule includes the statement that "construction that causes significant ecological impacts is not considered normal maintenance and repair."

330(3)(a)(i) Repair, replacement

There is an inconsistency with regard to bulkheads and permits. Will bulkhead repairs continue to be exempt from Substantial Development Permits, or will a permit and SEPA review be necessary?

The provisions of the guidelines do not determine whether or not a substantial development permit or SEPA apply to a project.

330(3)(a)(i) Repair, replacement

"Normal repair" and "normal maintenance" includes "the patching, ... of existing structures, ... and the replacement of less than twenty percent of the existing structure." Ecology should be aware that this has the unintentional consequence of potentially closing a ferry terminal to the public if more twenty percent of a bulkhead is lost prior to performance of normal maintenance and repairs. Provision should be allowed for "normal repair and maintenance" to encompass greater than twenty percent of the

existing structure. Does this limitation apply to emergency repairs?

Replacement of more than 20% would be governed by the requirements concerning replacement. The provisions of the guidelines do not determine whether or not an emergency exemption is appropriate.

330(3)(a)(i) Repair, replacement

The Rule states that additions to or increase in size of existing shoreline stabilization measures shall be considered new structures, even if they are replacement structures. However, it may be an opportunity to allow replacement of the existing structure if the additional portion leads to the improvement of shoreline habitat. This opportunity is lost without incentives.

Comment noted.

330(3)(a)(i) last para

Local governments are encouraged to expedite permitting for the removal of unnecessary shoreline stabilization but is not encourage to expedite permitting for a shoreline modification that is necessary to protect property.

Comment noted.

330(3)(a)(ii) Standards

Path B should include stricter standards for repair and maintenance of bulkheads, which increase erosion and sedimentation. We suggest that landowners be required to consider other options before resorting to building new bulkheads. Path B should also require species surveys and the development of adequate data when this is information is not available.

The provisions of the section clearly require consideration of alternatives to bulkheads.

330(3)(a)(ii)(A)

New structural stabilization measures shall not be allowed except to protect or support an existing or approved development...Approved developments are not existing and should be required to build so that stabilization will never be necessary, following the requirements on page 152. New development can be required to use appropriate building techniques, such as setbacks, good drainage, less than 10% impervious surfaces, retaining vegetation, etc., so that no stabilization is necessary. New development must be required to have a geologic report stating that safe building can occur without stabilization measures or building permits shah not be granted.

Some highly appropriate and necessary development cannot occur without stabilization. The proposed provision would preclude these uses. The provisions of the section assure that where the stabilization is necessary that mitigation for impacts occurs.

330(3)(a)(ii)(A) & (C)

You define when structural stabilization is allowed to protect a given "development." We feel that the term "development" might encompass structures such as tool sheds or boat houses which are non-essential and can be relocated. We suggest that you use the phrase "essential structure, dwelling, or business" rather than "development."

The wording in the rule is necessarily broad in order to ensure that significant structures or development which does not fall into the category of an "essential structure, dwelling or business" may still be protected where it meets the other requirements of the rule.

330(3)(a)(ii)(B)

New development shall, where feasible, be located and designed to eliminate the need for concurrent or future shoreline stabilization. Inconsistent message: Delete "where feasible".

It is necessary and reasonable to consider feasibility, as the term is defined for the purpose of the guidelines, in determining whether or not shoreline stabilization is appropriate. The criteria and purpose for doing so are established in the guidelines.

330(3)(a)(ii)(C)

There is nothing in the ESA that protects proposed species or the prey of proposed, threatened, or endangered species.

Ecology believes protection of the food source of species protected by the ESA is necessary to protect and restore these species.

330(3)(a)(ii)(C)

Not all residential development will be able to meet these criteria. Furthermore, including prey of PTE species will include hundreds of more lots that will be subject to this criteria. The RCW clearly states that SFR's are exempt from a permit and it is within the intent of the RCW to allow SFR development on existing lots. These criteria will result in takings. DOE and the Services should be prepared to compensate property owners as Island County does not condone these requirements and will not be liable for implementation of them.

Path B is only adopted at the option of local government. The provisions of this section are deemed necessary to assure protection of listed species. The provisions of the guidelines do not affect the status of SFRs under the permit requirements of the SMA. As a general matter we believe that most if not all existing lots will remain developable. However, the scale, scope and intensity of development and associated landscaping will undoubtedly be different than under previous master programs.

330(3)(a)(ii)(C)

...new nonwater-dependent development, including single-family homes, that includes structural shoreline stabilization shall not be allowed unless... Inconsistent message: if a development will require stabilization it should not be allowed. We must make choices and it is clear that public resources must take precedence over an individual's desire for a home with a view. You have stated in your guidelines that "...and the guidelines must be consistent." It is essential that you delete this section and that Ecology's intent is clarified, and that salmon recovery is prioritized.

The conditions applicable to the exception assure that the need is clearly established, alternatives considered, and impacts addressed for all shoreline stabilization.

330(3)(a)(ii)(C)

Delete the reference to "new nonwater-dependent development" in this section.

Ecology does not agree with the suggested change. This subsection addresses both non-water-dependent and water-dependent new development.

330(3)(a)(ii)(C)

Control of upland drainage is necessary before a proponent can address erosion by altering the shoreline. The Rules need to specify this process. That is, does Ecology or the local agency take the lead in addressing upland drainage problems for a ferry terminal if it occurs on private property? WSF has no authority to perform work on property it does not own or lease.

The reference is to control of upland drainage from property within the control of the applicant for a shoreline stabilization project.

330(3)(a)(ii)(G)

Should be changed to: "New or enlarged shoreline stabilization measures for an existing structure, including residences, shall not be allowed..."

☒ Ecology respectfully declines this suggestion; we believe the present language in this subsection is sufficiently detailed.

330(3)(a)(ii)(G)

Amend this section as follows: "New or enlarged shoreline stabilization measures for an existing structure, including SINGLE-FAMILY residences. . . "

☒ Ecology believes the current provisions of the section are appropriate. It is specifically intended to apply to other shoreline residential use to whatever extent they may exist.

330(3)(a)(ii)(G)

Under Part IV, even if a geotechnical report proves imminent danger to the property, impacts to proposed, threatened, and endangered species must be assessed through an additional habitat evaluation.

☒ Ecology has amended the rule to address this comment. The rule reads: "New or enlarged structural shoreline stabilization measures for an existing structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in ~~imminent~~ danger within the next three years from shoreline erosion caused by tidal action, currents, or waves."

330(3)(a)(ii)(G)

The geotechnical analysis referenced in this subsection should evaluate revegetation with native plant species and enhancement of existing native vegetation as a means of reducing undesirable erosion. If the geotechnical analysis demonstrates a need for shoreline stabilization and associated assessment of habitat, such stabilization shall be conditioned to maintain and restore PFCs.

☒ Ecology believes the suggested message is already conveyed in this subsection.

330(3)(a)(ii)(G)

Addition to this section: The geotechnical analysis shall assess potential impacts to adjacent properties. In the event that the shoreline stabilization negatively impacts neighboring property owners or public resources. affected property owners or the public shall be compensated, by the property owner.

☒ The provisions of the section as a whole address off-site as well as on-site impacts. Whether or not compensation is owed to adjacent property owner is a matter of law well beyond the scope of these guidelines or the SMA.

330(3)(a)(ii)(G)

Add the following to this section: "Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified experts using an interdisciplinary approach including engineers or geologists, and biologists who are knowledgeable about the regional and local shoreline geology, biology and processes."

☒ Ecology declines this suggestion. "Geotechnical report" or "geotechnical analysis" is already defined at section 020(21).

330(3)(a)(ii)(H)

Add the following language: An existing shoreline stabilization structure not constructed or previously repaired in accordance with the WDFW Integrated Guidelines for Bank Stabilization shall not be replaced with a similar structure unless .

Add the following language: The replacement structure shall be designed, located, sized, and constructed in accordance with the WDFW Integrated Guidelines for Bank Stabilization to minimize ...

Add the following language to subsection (I): Use measures described in the WDFW Integrated Guidelines for Bank Stabilization that are designed to minimize .

☒ Ecology declines these suggestions as they add a level of specificity that is not appropriate for the Guidelines.

330(3)(a)(ii)(H)

Who determines what "located landward to the greatest extent possible" is? How is it determined?

☒ The geotechnical report must indicate that the proposed location for the replacement structure meets the standards in this subsection.

330(3)(a)(ii)(H)

We support efforts to require "soft shoreline stabilization". This will be important as existing hard shoreline stabilization structures need to be repaired and replaced over the next decade. This represents a significant opportunity for shoreline restoration.

☒ Comment noted.

330(3)(a)(ii)(I)

Omit or define: The statement "primary structures" is vague and subject to a wide array of interpretation. It is vital that its definition is included in WAC 173-26-020 (Definitions). If no definition can be arrived at, the phase "primary structures" should be omitted.

☒ The use of the term "primary structure" is intentionally broad and allows varied interpretation to suit local circumstances and specific types of uses. The overall meaning is sufficiently clear.

330(3)(a)(ii)(I)

Too many of our shorelines (fully 1/3) are armored. Path B should require land owners to consider alternatives to hard shoreline armoring. Soft alternatives should be required not just considered.

☒ Section (I) requires that "Mitigation shall address the functions lost. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses."

330(3)(a)(ii)(J)

"Include vegetation conservation, as described in WAC 173-26-320(5), as part of shoreline stabilization, where applicable." Unnecessary word(s): The phrase, "where applicable" is unnecessary, and weakens a good provision. Should be fanged to: "include vegetation conservation, as described in WAC 173-26-320(5), as part of shoreline stabilization."

☒ There may well be locations and circumstances where vegetation conservation is not applicable and therefore use of the term "where applicable" is appropriate.

330(3)(a)(ii)(L)

to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Delete: It must be remembered that there are profound, negative consequences when individuals are allowed to disrupt the sediment conveyance system of a feeder bluff. This should not be allowed. In areas where homes have been built on bluffs, those homes should be moved back or removed, if they become unstable.

☒ Ecology believes the suggestion is an unrealistic expectation. The requirement to minimize and mitigate is adequate to address the issue.

330(3)(b) Piers and docks

This section is too cursory given the magnitude of the problem we face with these structures. We believe it would be useful if it were expanded in the same way the shoreline stabilization section has been, to discuss impacts and alternatives.

Ecology believes the section adequately addresses the issue. While docks are a problem in some locations they are not a big problem everywhere in the state.

330(3)(b)

Please provide evidence to substantiate your claim that all over water structures are harmful. Is it seasonal harm? And how many such structures on a shoreline reach are how harmful?

Docks and other overwater structures damage vegetation through shading and can interfere with fish migration. Each such structure has some impact, however the major impact is cumulative. The number that would be harmful may vary based on the environmental and physical characteristics of the water body and the size of docks allowed.

330(3)(b)

Private docks should not be allowed to extend to deep water simply to accommodate a property owner's preference for a deep-draft boat. A state-wide water length/depth standard should be considered for marine and lake shorelines (e.g. not to extend beyond a point that is one foot below mean lower low water for saltwater, mean summer level for lakes). The standard would be a maximum, not a guarantee if such length creates other impacts.

In light of multiple listings of aquatic species as threatened or endangered, we must significantly revise our system of permitting docks and piers. Nonwater-dependent homes can share public or commercial docks and piers for their boating needs, just as people who live away from the water. Until salmon have recovered we must make real changes. Docks have a significant. impact and must be restricted further. Ecology should forbid construction of docks in natural, rural conservancy, urban conservancy or shoreline residential environments.

Docking of a boat is a water dependent use that is due some deference under the SMA. There is little evidence that shorter docks have less impact on ecological systems than longer docks. The greatest impacts are in the shallowest water areas. However, the length needs to be limited to maintain open water accessible to all. The statewide standard in the guidelines is an appropriate balance between allowing reasonable docks and protecting public space and ecology. Local government may choose to further limit dock length in response to local issues or concerns.

330(3)(b)

There should be some mention of the impact of solid flotation materials and their placement that will visually block, when floating, a fish's view of the other side and thereby hinder its movement under the dock. The suggested requirement for six square ft on the bottom per 30 feet of linear dock would greatly reduce that type of impact. This engineering requirement is especially important along the last 30 to 60 ft of so of the dock as it attaches to the uplands. It is this part of the nearshore area along the high tide line that the juvenile salmon use as they move out of their natal streams and rivers along the shoreline and into deeper water as they mature.

There should be some language in this section and 330(3)(b) that speaks to a minimum footprint of the floatation material on the beach. Merely saying that you shouldn't impact fish habitat or eel grass may not prevent impacts to benthic organisms where the floatation system lays on the beach during low tide and smothers them. There should be some rule of thumb engineering standards mentioned in your text such as six square feet of bottom contact per 30 feet of linear dock.

The guidelines require the use of appropriate scientific and technical information as applicable in the specific setting and avoidance of impacts. Docks have different impacts depending the specific location and the associated habitat values. Future guidance materials will address this issue as will each local master program where it is an issue.

330(3)(b)

Delete the last paragraph on this page regarding Piers and docks. Port district "needs analysis" cannot serve as the basis for speculative filling. Allowing Ports to use such analysis in this way completely undermines the entire purpose of the SMA, namely to avoid unnecessary alterations to the shoreline. Had this provision been in place in the original SMP guidelines, in 1975 the Port of Grays Harbor would have been prepared to go forward with proposal for three square miles of filling for speculative development. There is no reason to undermine the SMA in this way. Washington Ports have not been unduly constrained by not being allowed to develop speculative projects. On the contrary, considerable shoreland habitat has been retained because Ports have not been allowed to snooker the public in this fashion. Therefore, we strongly demand that Port needs analysis be deleted from these guidelines.

Port development plans or port district "needs analyses" provide a reasonable basis for judging the need for docks and piers.

330(3)(b)

Joint-use or community dock facilities are only required of new multiunit residential development. To be effective, joint-use or community dock facilities should be required for all new residential development. There are some indications that overwater structures alter the behavior of juvenile salmon and have the potential to impact habitat, including eelgrass beds.

Please clarify that "multiunit residential developments" are not allowed in shoreline areas and that joint-use or community docks are only to be considered when such residential development occurs outside of shoreline areas.

Multiunit residential developments may only have community docks. Privately owned docks are a unique source of recreational access throughout Washington and are consistent the SMA's preference for single family housing. It is unduly burdensome and impractical to require waterfront property owners to jointly own docks or demonstrate a need before a dock is allowed. Further, the Guidelines do not provide sufficient scientific data that justifies this drastic prohibition.

Ecology has revised the rule to address this comment. The final rule reads: "Where new piers or docks are allowed, master programs shall contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities rather than allow individual docks for each residence.

For new multiunit residential developments, master programs shall limit new dock construction to joint-use or community dock facilities rather than allow individual docks for individual residences."

This change clarifies that joint use docks are required of all residential development of two or more dwellings.

330(3)(b)

Path A "encourages" joint use or community dock facilities over individual docks serving single-family homes, and requires strict design standards if allowed.

However, Path B is far more restrictive, stating that "[n]ew pier or dock construction [including single-family homes] should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses."

Minimum size necessary is simply a matter of relating the characteristics of the water body at the site to the proposed use and assuring that the dock accommodates the use while not being longer, wider, higher, etc than necessary. Local governments make these determinations on a regular basis. The local SMP will provide more specific guidance as appropriate to the local setting.

330(3)(b)

Please remove the reference to "joint use" piers and docks. This will help reduce proliferation of docks.

The intent of the joint use dock provisions is to reduce the proliferation of docks. If two neighbors each want a dock and they can get together and build one dock that serves both, that is a net decrease of one dock.

330(3)(b)

Missing key sentence: The following sentence was included in Path A, but left out of Path B. "Master programs should require that structures be made of inert, nonpolluting materials. It is important that this sentence is not left out of the stricter, and more protective Path B.

Ecology has revised the rule to address this comment. The final rule reads: "Master program provisions for piers and docks shall prevent cumulative impacts to PFC consistent with WAC 173-26-300(2)(e) and should require that structures be made of materials that have been approved by applicable state agencies."

330(3)(c) Fill

Please explain how fills can be located and designed to protect shoreline ecological functions? Delete this sentence and restate it as follows: "FILLS ADVERSELY IMPACT shoreline ecological functions and, THEREFORE, shall not BE LOCATED SO AS TO adversely affect or preclude the attainment of PFC and hydrological and geomorphological processes, including channel migration."

It is appropriate to allow consideration of alternative approaches that may not adversely impact ecological functions and that is what this provision does.

330(3)(c)

Amend the last sentence in this section as follows: "ALL FILLS shall require a conditional use permit."

Fill placed above the OHWM is far less likely to impact statewide interests and must comply with the provisions of the guidelines generally.

330(3)(d) Breakwater, jetties, groins and weirs

Damaged or dilapidated breakwaters, jetties, groins and weirs should be removed or upgraded to a condition that is consistent with state and local guidelines.

The SMA does not provide the authority to require the removal or reconstruction of legally existing structures and uses in the absence of a new development related to the structure or use.

330(3)(e) Beach and dune management

Dune modification to protect views of the water shall be allowed only where the view is completely obstructed for residences or water-enjoyment uses and where it can be demonstrated that the dunes did riot obstruct views at the time of construction." Delete inconsistent section: Dunes shift. At times they will block views and at times they won't. Homeowners cannot reasonable expect to build on a beach and freeze the dunes in place at "time of construction." Long Beach is an example of the impossibility of keeping the beach where you want it. Additionally, this conflicts with section WAC 173-26-320 (2) Critical Areas (b) Principles (vi) "Promote human uses and values, such as aesthetic values, provided they do not adversely impact ecological functions." Remodeling dunes when they block views will adversely impact ecological functions and this section must be removed.

Dune modification is limited adequately by the provisions. It is appropriate to recognize changes that adversely effect legally established uses provided that the remedy addresses impacts properly.

330(3)(e)

Should be changed to: "Dunes and associated beaches shall also be managed to reduce hazard to human life and property..."

Ecology respectfully declines this suggestion, as the proposed revision does not add substantively to the provision.

330(3)(e)

Add the following to the last paragraph on this page in the section on Beach and dunes management: "Because coastal master programs shall institute development setbacks from the shoreline, structural protection measures shall not be allowed along the Pacific Coast."

There may be reasonable and necessary exceptions, therefore the broad prohibition proposed is inappropriate.

330(3)(f) Dredging and dredge material disposal

The statement, "unless necessary to improve navigation", is a concern. This is a standard every local Port will believe they meet. There must be standards clarifying need, set by Ecology and contained within these guidelines. Should be changed to: "Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged a»d/or existing authorized location, depth, and width."

While the standard may be one that every port believes their proposed projects will meet, the determination of necessity will be made by local and state government. The proposed revision does not add substantively to the provision.

330(3)(f)

Dredging for the purpose of establishing, expanding, or relocating navigation channels and basins should be allowed only when significant ecological impacts are minimized... The statement "impacts are minimized" is vague and offers no guidance. Should be changed to: "Dredging for the purpose of establishing, expanding, or relocating navigation channels and basins should snot be allowed when significant. ecological impacts and damage to the PFC of PTE species will occur. "

As a water dependent use, navigation is afforded some additional leeway under the SMA. Minimization of impacts is the appropriate standard particularly when mitigation is required for all identified significant impacts.

330(3)(f)

This section ignores the potential for dredging in channels that are not navigation channels. Additional language should be added to restrict dredging in such channels.

All dredging, regardless of purpose, must be conducted in a manner that avoids significant ecological impacts.

330(3)(f)

Where dredge spoils are known to be contaminated at levels that are of concern to human health or ecosystems, aquatic disposal should be prohibited.

Ecology has revised the rule. The language now reads: "Dredging and dredge material disposal shall be done in a manner which avoids ~~adverse~~ significant ecological impacts."

330(3)(f)

Add the following to the section on Dredging and dredge material disposal: "Local governments shall take steps to identify sources of sediment that result in the need for dredging and to take measures that will reduce such sources to reduce the need for such dredging. Local governments will work with other Federal, state and private landowners in a cooperative fashion to achieve such reductions and shall include such measures in its shoreline master program."

This is a broad planning consideration under the cumulative impacts provisions of the guidelines.

340 Shoreline uses

Generally, we do not feel as though this section provides a lot of value to the rule and, in fact, may create confusion and actually be in conflict with other portions of the rule. The standards in this section are not always completely consistent with those established in sections on environment designations and vegetation management. Readers of the rule would benefit from more clarification of the relationship of these various sections to one another.

This section provides more specificity relative to specific groupings of shoreline uses that are not covered elsewhere in the rule. Ecology therefore believes it should be retained.

340

This section must be amended to make clear that Shoreline Uses cannot be permitted when they are not specifically listed. We are concerned because EFSEC and the U.S. Forest Service issued a draft Environmental Impact Statement for Olympic's Cross Cascade pipeline project in which they determined that the project was consistent with relevant state plans, including the State of Washington Shoreline Management Act. They argued this because "the plan was silent regarding petroleum pipelines or utility lines." This is unacceptable, there needs to be clarification.

Unclassified uses are automatically required to be reviewed as a conditional use. The provisions of 173-16 address utility lines and pipelines as do most existing local SMPs. WAC 173-27-140(1) requires that "no authorization for a use or a development shall be granted unless it is determined to be consistent with the policy and provisions of the SMA and the SMP."

340(2)(a)(iii) General use provisions - Principles

Missing key bullet: The following provision was included in Path A, but is missing from Path B. "Establish regulations to ensure use compatibility and mitigate impacts, such as destructive flooding, erosion, and water quality degradation."

Ecology has changed the language from Path A (section 240) to match the language in section 340(3)(a) (iii) and (iv), because the words were different, but the meaning was the same.

Section (iii) reads: "Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses."

Section (iv) reads: "Establish regulations to mitigate existing and potential impacts affecting the attainment of PFC and other ecological functions."

340(2)(a)(iv)

Under "application" of "general use provisions," in bullet four, we suggest that you delete the phrase "mitigate existing and potential impacts" and insert "prevent and mitigate impacts".

The point of the provision is to provide for addressing current system deficiencies regarding PFC for PTE as well as potential impacts. The proposed change would defeat this purpose and thereby is inappropriate.

340(2)(b) General use provisions – Conditional uses

Comment: We do not understand the third bullet. What does provide the opportunity to require design modifications or environmental analysis of a proposal mean?

A conditional use permit requires a higher level of analysis. Therefore, special consideration of environmental and other concerns that may not have been specifically identified in the regulations may be required and the project design as submitted may require modification. Through this process, a project that may otherwise be inconsistent with the policies of the SMA and the SMP may be made sufficiently consistent to be authorized. It also may be that, even though a particular use has been approved elsewhere, it may not be approvable in the particular location at issue.

340(2)(b)

Omit: "In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright." Clarify: We agree with the final statement in this section: "Master programs shall-contain provisions that assure that uses requiring a conditional use permit shall not be allowed if they would cause significant ecological impacts to properly functioning condition for PTE species." However, we find it to conflict with the bullet points which it follows, allowing permits, albeit conditional use permits, in the following areas: critical saltwater habitats, disposal of dredge material within a river channel migration zone but outside a harbor area, class IV general forest practices where shorelines are being converted or are expected to be converted to non-forest uses, etc. These will cause significant ecological impacts to properly functioning condition and the guidelines must clarify that they will not be allowed.

The provisions for conditional use assure full consideration of the relative benefits and impacts of a proposed use include impacts to statewide interests. The conditional use permit system is clearly a rigorous review of these issues.

340(2)(b)

Second bullet: shouldn't that read "such as fill waterward of the OHWM..", rather than "landward'?

Ecology has revised the rule to address this comment. The final rule reads: "Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions, such as fill ~~landward~~ waterward of the ordinary high-water mark, disposal of dredge material within a river channel

migration zone but outside a harbor area, eClass IV general forest practices where shorelines are being converted or are expected to be converted to nonforest uses, breakwaters, jetties, groins, and weirs."

340(2)(b)

Examples of conditional use permits should include altering associated wetlands and their buffers.

Examples are not substantive provisions and thereby the proposed change would not change the substance of the rule.

340(3)(a) Agriculture

All existing agricultural activities will escape regulation under these new guidelines. While all agriculture along applicable shorelines must be inventoried and included as part of the cumulative impact analysis required of local jurisdictions as described under -300(3)(d)(iii), these local entities will have no non-voluntary means to improve shoreline ecological condition in existing agricultural areas. Instead, local regulators will be limited to improving "development" best management practices with the hope that, in so doing, watershed-wide conditions will improve. This approach is inconsistent with the goals of the SMA and the authority of ESA. In many areas of the state, past and ongoing agricultural activities have resulted in degraded riparian conditions and water quality. This unconditional exemption for ongoing agricultural practices is inconsistent with the goal of achieving properly functioning conditions for PTE species and should be eliminated.

New SMP provisions should not apply retroactively to existing agricultural uses. Missing important idea: This sentence fails to provide protection for PTE species and the protection and restoration of PFC. In fact there is no reference to the PFC of PTE species within this whole section, only one reference to priority species. We wonder at what point habitat improvements on agricultural lands will be addressed by the State.

Agriculture is not exempt from the guidelines nor is it the subject of any change in the regulatory system as it has been applied under the SMA since its initial adoption. The SMA applies to agriculture in the same way it applies to all uses. While all uses are subject to regulation through the local master program, in most cases, existing and ongoing uses are the subject of a local program only to the extent that such use is proposed to be changed or to conduct development. For example; an existing home, office building, or marina, ongoing use of the property, in essentially the same manner as it has been used, is allowed without any further authorization through the local government. The structure and grounds can be maintained and tenants may come and go, as long as the use is not changed nor the structure and grounds significantly modified. If a change is proposed, the local government reviews the proposal for consistency with the local SMP.

The SMP defines use categories that may be general or very specific. These regulations together with provisions on lot size, setbacks, etc., then define the latitude that each property owner has beyond the existing and ongoing use. Some changes are allowed outright, others require discretionary review through a permit process and others may be prohibited altogether. Unlike uses conducted in a building or facility, agricultural activities are conducted on the land. While there are other such uses, agriculture is unique in many ways and thereby require special provisions to describe what existing and ongoing use means. However, the intent of these provisions is to assure similar treatment to other uses, not special treatment. Management of the agricultural practices that are part of existing and ongoing agriculture is the subject of the Agriculture Fish and Wildlife negotiation currently being conducted by the state.

340(3)(a)

Given the overproduction of cranberries which adversely impact wetlands and shorelands, local governments in coastal counties should be encouraged to reduce the acreage of cranberry production and promote wetland restoration.

Ecology does not believe this would be appropriate in the shoreline master program guidelines.

340(3)(b) Aquaculture

We recommend that you reconsider your section on aquaculture, as it regards fish. You need to ensure that the statement "it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline" is scientifically defensible. If you have data to support your statement, please reference the studies. Among the numerous known problems with aquaculture, are: salmon raised in close quarters carry diseases which they have passed on to migrating salmon; they are fed a pellet mixture which is produced by mining the ocean waters of any and all organisms, causing long term food shortage problems in the marine environment; it attracts marine mammals, exacerbating predation problems; pollution problems from aquaculture operations have yet to be adequately addressed: Atlantic salmon have strayed and are known to have reproduced in the wild. It is beginning to seem that the long-terra problems outweigh any short-term benefits. It is not a panacea to a shortage of salmon that we would wish it to be.

Some of these issues are more properly in the purview of WDFW. Consideration of the impacts cited is addressed by the section.

340(3)(b)

Aquaculture development should be discouraged from impacting aesthetic qualities of the shoreline, including open water areas within public viewsheds.

Consideration of visual impacts is required as a part of the SMP development and the permit process for such projects.

340(3)(b)

Amend language to require aquacultural facilities to be designed, located and operated so as not to spread disease to native aquatic life .....

Aquaculture is a preferred use when consistent with control of pollution and prevention of damage to the environment. These guidelines do not permit aquaculture in areas where it would significantly degrade ecological functions including the spread of disease to native flora and fauna.

340(3)(b)

Reference to establishing nonnative species should be eliminated or qualified to make it clear that there are other regulations that evaluate impacts associated with introductions of species. Our concern is that this language could prevent us from establishing new farms because Pacific oysters and Manila clams, mainstays of the industry, are both nonnative species.

Ecology has revised the rule to address this comment. The final rule reads: "Aquacultural facilities shall be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020."

340(3)(b)

Please add the following to this section on Aquaculture: "Priority shall be given to aquaculture activities which utilize native species."

Based on a case-by-case evaluation, non-native species may be acceptable for aquaculture development. Pacific Oysters and Manila clams are an established and benign non-native species. Upland facilities may also be well suited to utilize non-native species without threat to the environment.

340(3)(c) Boating facilities

These regulations will thwart all forms of maritime related industries, businesses, and access to the maritime park system.

These guidelines implement the SMA policy to protect and preserve shorelines and shorelands for water-dependent, water related, and water-oriented uses. RCW 90.58.020.

340(3)(c)

Impact not Included: River rafting is increasing in popularity in Washington State and the impacts from rafting are not considered in the draft guidelines. As the goals of the SMA for recreation conflict with the goals of the SMA for protection of PTE species, rafting and its impacts must be addressed to clarify the inherent conflict.

This issue is addressed in 340(3)(I), which states that: "Provision shall be made in master programs for the public to enjoy the waters of the state. Master program provisions shall ensure that shoreline recreational facilities, now and in the future, can reasonably tolerate, during peak use periods, a balance of active and passive uses without causing significant ecological impacts to ecological functions."

340(3)(c)(i)

Regulations on boating facilities should take into account (and mitigate for) known water quality concerns, particularly where PFC or a municipal drinking water supply may be affected.

Ecology believes the minimum requirements in subsection (i) adequately address the concern. The section requires applicable master programs to contain "provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses and where significant ecological impacts to PFC for PTE can be avoided."

340(3)(c)(iii)

Regulations to avoid or, if that is not possible, mitigate visual impacts. Missing key word(s): The previous sentence is from Path B but is missing words that were included in Path A, it should be changed to: "Regulations to avoid or, if that is not possible, mitigate visual and ecological impacts.

Ecology has added the phrase "and significant ecological impacts" to the end of the sentence to make the provision consistent with Path A.

340(3)(c)(v)

Where is the science to support your effort to eliminate live-aboards and covered moorage's?

These guidelines promote limiting the impacts of live-aboards and covered moorages. They do not ban either of those uses. This is based on the desire to reduce pollutants discharged by live-aboards and the adverse impacts from covered moorages such as shading habitat, blocking views, and aesthetic considerations.

340(3)(d) Commercial development

Commercial development should not be permitted just because it grants public access. Master programs shall consider the biophysical limitations of the shoreline, the ecological functions preformed and meaningful public access and potential for significant ecological rehabilitation requirements for all water-oriented commercial uses... unless such improvements are demonstrated to be infeasible. Master programs shall exclude nonwater-oriented commercial uses from locating on the shoreline unless. (i) The use is part of a mixed-use project with significant general public access that includes water -dependent uses. Unless the use provides public access and ecological enhancement and it meets all of the following criteria.

Ecology has revised the rule. The opening paragraphs now read:

"Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

Require that public access and ecological restoration be considered for all water-dependent commercial development. Require that public access and ecological restoration be a condition of all nonwater-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Refer to WAC 173-26-220(4) for public access provisions.

Master programs should exclude nonwater-oriented commercial uses from locating on the shoreline unless they provide public access and ecological restoration and they meet at least one of the following criteria…

~~Master programs shall give preference to water-dependent commercial uses on the shoreline. Master programs shall consider public access and ecological restoration requirements for all water-oriented commercial uses. Shoreline ecological protection, maintenance, or restoration shall be a condition of all nonwater-dependent commercial development where necessary to achieve properly functioning condition. Public access shall be a condition of all nonwater-dependent development as described in WAC 173-26-320(4) except where such improvements are demonstrated to be infeasible or inappropriate. Master programs shall exclude nonwater-oriented commercial uses from locating on the shoreline unless they provide public access and ecological enhancement and they meet at least one of the following criteria:"~~ "

340(3)(d)

Change to read: New nonwater-dependant commercial development shall be required to protect and restore existing native riparian vegetation. Other references to vegetation in this subsection should be changed to native riparian vegetation.

Ecology removed the phrase "native vegetation" in several locations. It is not always clear exactly what non-native vegetation is. Also, non-native vegetation can sometimes perform important ecological functions.

340(3)(d)

We are strongly opposed to Ecology opening up so many loopholes for nonwater-dependent uses. Please delete "nonwater-dependent commercial development" and "nonwater-oriented commercial uses" from this section. Also delete the last sentence and criteria found in the first paragraph of this subsection, as well as delete the second and third paragraphs of this subsection.

The SMA (90.58.020) recognizes that uses beyond those that are strictly water dependent are appropriate shoreline uses as long as those uses that are water dependent are provided for and the

other uses are consistent with control of pollution and prevention of damage to the natural environment.

340(3)(d)

Standards for "commercial development" focus on "nonwater-dependant" uses, but there are no apparent standards for water dependent uses. We do not believe it was your intent to allow water dependant commercial development to proceed without environmental standards. Water dependant uses should, at the very least, be expected to avoid harm to vegetation and other features of the landscape necessary to achieve PFC.

Ecology has revised the rule to address this comment. The rule includes the sentence: "Require that public access and ecological restoration be considered for all water-dependent commercial development."

340(3)(d)

Missing important sentence: The following sentence was missing from Path B but was included in Path A under the commercial development subsection on page 68. "Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and in support of water-dependent uses."

Ecology has revised the rule to address this comment. The rule includes the paragraph: "Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and in support of water-dependent uses and provided the size of the over-water construction is not expanded for nonwater-dependent uses."

340(3)(e) Forest practices

The broad exemptions granted to existing forestry activities are contrary to the objectives of the guidelines. The statewide timber and fish legislation enacted last year erred considerably on the side of the timber industry, promised at best only minimum relief to salmon. Broad exemptions under the SMA will not improve the current situation. DNR should not be relied upon to manage forestry without the tools and guidance available through the SMA.

A major purpose for preparing these guidelines is to improve coordination between similarly applicable regulations. The Forest and Fish Report, and the resulting DNR regulations adequately address the issue in most circumstances. The local government retains the ability and obligation to protect shoreline resources.

340(3)(e)

RCW 90.58.150 has not been complied with since the guidelines were adopted 28 years ago. Please quote this section in full so that local governments and Ecology might have some reminder of what these provisions are.

The section is cited. Incorporation in full will not add to the willingness of local government to implement this provision.

340(3)(e)

Path B allows for decreased protection of shoreline areas: Both Path A and Path B forest practices provisions (WAC 173-26-240(3)(e) (page 68) and WAC 173-26-340(3)(e) (page 149)) place restrictions on conversions to residential uses, vegetation removal, grading, and development. In Path A, these restrictions apply within shoreline jurisdiction, whereas in Path B, they apply within one site potential tree height measured from the CMZ or within shoreline jurisdiction, whichever is less.

Ecology has revised the rule to address this comment. The rule now reads:

"Applicable shoreline master programs shall contain provisions to ensure that when forest lands are converted to another use, including a residential use, significant vegetation removal, grading, and development, except for low-intensity ~~water-dependent~~ uses and public access that ~~sustains~~ protect or restore ecological functions, are not allowed within ~~one site potential tree height measured from the CMZ~~ the vegetation conservation area as defined in section 320(5)(d)(iv) or within shoreline jurisdiction, whichever is less."

340(3)(f) Industry

Industrial development and redevelopment shall, where feasible, incorporate environmental cleanup and restoration of the shoreline area. The statement "where feasible" is unnecessarily weak. Omit "where feasible" as environmental cleanup and restoration should be required of industry. "In such cases, no new structural shoreline stabilization measures should be permitted..." Should be changed to: "In such cases, no new structural shoreline stabilization measures shall be permitted..."

Ecology declines this suggestion, because sometimes cleanup would be infeasible, or disturbance could worsen the situation.

340(3)(f)

Delete all references to nonwater-dependent development.

The SMA (90.58.020) recognizes that uses beyond those that are strictly water dependent are appropriate shoreline uses as long as those uses that are water dependent are provided for and the other uses are consistent with control of pollution and prevention of damage to the natural environment.

340(3)(g) In-stream structures

For further clarity, please provide examples of what sort of in-stream structures are contemplated.

In-stream structures are defined in 173-26-020 (24). The definition states that "in-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose."

340(3)(h) Mining

The standards, for shoreline uses in the proposed rule regarding mining activities contain specific prohibitions and proscriptions, particularly in Path B with regard to PTE and critical habitat. The inflexible approach is not consistent SEPA or with federal law and implementing regulations regarding recognized exceptions or "safe harbors" in the case of PTE and critical habitat. (See comments under –240).

Section 173-26-200(5) requires that local governments coordinate shoreline designations with GMA designations of mineral resource lands as a means of addressing this issue. The mining section recognize that mining and associated reclamation can be conducted in a manner that is consistent with protection of shoreline environmental resources when appropriately sited and conducted. Mining is an exception to the general rule on ongoing and existing uses because mining is, by its very nature, "development" as defined by the SMA and as such, mines must have a current valid shoreline substantial development permit to legally operate.

Unless otherwise specifically noted in the permit, substantial development permits expire after five years. Amendments to the SMA in 1996 allowed issuance of substantial developments permits with a term of more than five years, however all permits issued prior to 1996 expire after five years. The requirement to have a

substantial development permit is established in the SMA and is not being, and cannot be, changed by the guidelines. Since a substantial development permit is required, it is necessary and appropriate that the guidelines address requirements for renewal of such permits. The provisions address shoreline specific requirements and otherwise defer to chapter 78.44 RCW, the Surface Mine Reclamation Act.

The provisions of 240(3)(h) are not a blanket prohibition of mining. Where mining can be conducted in a manner that provides habitat and addresses other operational impacts it may be authorized.

340(3)(h)

Add to the end of the first sentence of the first paragraph: ". . . .may adversely impact critical shoreline resources AND ADJACENT LANDS."

Ecology respectfully declines this suggestion, as the mining provisions are adequate to allow consideration of impacts to adjacent lands.

340(3)(h)(v)

Gravel removal waterward of the ordinary high-water mark is likely to significantly impact the ability of the river to support PTE species and such impacts are unacceptable. Sand and gravel removal waterward of the ordinary high watermark should not be allowed.

Sand and gravel mining waterward of the OHWM is only allowed after a demonstration that it will not have significant impacts. Not all streams in the state support PTE species.

340(3)(h)(v)(A)

We object that sand and gravel can be mined if only state hydrologist and biologist agree that the operation will not significantly alter the natural processes of gravel transportation for the river system as a whole. There are upstream and downstream impacts even when there are none to the whole system. And the opinion of other experts from affected Indian tribes should be added to the list of required approvals.

Tribal opinion is solicited through the State Environmental Policy Act and Shoreline permit application processes. There is no statutory authority to require tribal approval of shoreline mining developments.

340(3)(h)(v)(A)

340(h) does not require consideration of fish use of the area proposed for mining.

173-26-340(h)(ii) requires that "where mining and associated activities are allowed, they must be conducted in a manner that is consistent with the policies of the environment designation in which they are located, impacts to fish and wildlife habitat shall be avoided, and all disturbed areas must be restored upon completion of mining."

340(3)(h)(v)(A)

Who monitors the mining's impacts and enforces the permit and its conditions?

Local and state governments are responsible for enforcing permit conditions.

340(3)(h)(v)(A)

The gravel miner should be bonded or insured to cover mitigation and permits should be immediately revoked when violated. Mitigation costs should demonstrated before granting permits.

Please see the compliance assurance provisions of 173-26-300(g)(ii).

340(3)(h) *(vi)*

Add to the policies and regulations the following: "(vi) Removal of sand and gravel from Washington islands shall be prohibited. Only on-island usage is allowed."

Local government may choose to consider incorporation of special provisions for islands.

340(3)(i) Recreational development

The statement in (i) "can reasonably tolerate" is vague and open to misinterpretation. It provides no structure for local governments. Should be changed to: "Master program provisions shall ensure that shoreline recreational facilities, now and in the future, can tolerate, during peak use periods, a balance..." Additionally, the word "significant" should be struck from the sentence.

Ecology believes the provision is adequate to assure consistency with the policy and provisions of the SMA.

340(3)(i)

Please add to the policies and regulations the following: Recreational uses, including public access that could cause significant ecological impacts to shoreline ecological functions are prohibited.

Protection of ecological functions is adequately covered by the provisions of this section when read in the context of the guidelines as a whole.

340(3)(i)

Question: Will rafts be allowed to enter the river at any time of the year? What about the inevitable conflicts between log jams, which are desirable for salmon, and safe rafting of the river? Large woody debris recruitment in rivers is needed for salmon yet a safety problem for rafters. Rafters can create a significant problem of spawning salmon and redds. The use of shoreline and river corridors for rafting can and should be addressed. It is important that the inherent conflict within the SMA over recreation use and salmon recovery are resolved, and that salmon recovery is the priority.

Ecology does not believe there is an inherent conflict between recreation and salmon recovery. To the extent there is a conflict, it can be addressed by local governments as they prepare SMPs with public involvement and the use of scientific and technical information.

340(3)(j) Residential development

Regarding Residential development, please rename this section "Single-Family Residences." The Sierra Club is strongly opposed to allowing multifamily development, multiunit residential development, including duplexes and fourplexes in shoreline areas. These are not single-family residences and are not preferred uses under the Shoreline Management Act. Therefore, we request that Ecology stop using the term "residential development" as a way of circumventing the Shoreline Management Act and revise this section to address the policies and regulations that are need for limiting the adverse impacts from SINGLE-FAMILY RESIDENCES.

No residential use is water-dependent, and priority is only given to single-family residences. However, the SMA requires local governments to plan for "all reasonable and appropriate uses." Under certain circumstances duplexes and even multifamily residential development is appropriate within shoreline jurisdiction and consistent with SMA policy.

340(3)(j)

We appreciate standards established for residential development, but wonder what the scientific justification is for limiting requirements for set-backs and other

restrictions to this one use. These requirements should be applied to commercial, industrial, and other uses.

Requirements for protection of ecological functions are applied to all shoreline development, including commercial, industrial and other uses. The requirements for setbacks and density regulations, etc. are specific to shoreline residential uses.

340(3)(j)

Master programs shall include shoreline setbacks, bulkhead restrictions, vegetation conservation requirements, and where applicable, on-site sewage system standards... Missing key word(s): The previous sentence is missing the phrase, "density regulations". It is vital that this phrase be included within the provision. The statement, "where applicable" is unnecessary and provides the opportunity for exemption from the provision. Should be changed to: "Master programs shall include shoreline setbacks, bulkhead restrictions, vegetation conservation requirements, density regulations. and on-site sewage system standards..." These words were included in Path A but were missing from Path B.

Ecology has revised the rule to address this comment. The rule now reads: "Master programs shall include shoreline setbacks, density regulations, bulkhead restrictions, vegetation conservation requirements, and, where applicable, on-site sewage system standards ~~and density regulations~~ for residential uses, including single-family residences and appurtenant structures and uses, in accordance with the provisions of this chapter." The phrase "where applicable" recognizes that on-site systems are not always present.

340(3)(j)

We agree that "New residential development, including appurtenant structures and uses, shall be sufficiently set back from shorelines so that structural improvements, including bluff walls and . other stabilization structures, are not required to protect property." However, this conflicts with several sections where stabilization is allowed for new development.

Ecology has revised this section of the rule to make the language in Path A and B consistent. The sentence now reads: "New residential development, including appurtenant structures and uses, shall be sufficiently set back from ~~shorelines~~ steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect property."

Ecology does not believe this language is inconsistent with shoreline stabilization standards. There may be some circumstances where stabilization is necessary for reasonable use to occur, such as ferry terminals, or new residential use on existing platted lots.

340(3)(j)

3rd para. on public access should include the phrase substantial public access, to meet the identified current and future access needs, and account for opportunities in the future.

Section 320(4)(c) and (d) establish a process to address this issue.

340(3)(j)

If piers, docks, breakwaters, jetties, groins and weirs are allowed in residential development, local governments should consult the department technical assistance materials and afford the best possible protection to priority species and shoreline processes. Do not allow in residential development: The best possible protection to priority species and shoreline processes will be a natural, protected shoreline. Salmon have declined to the point of an endangered species listing in pare. because of shoreline development. Further unnecessary development will only further the decline of threatened and endangered aquatic species and must not be allowed.

The rule requires that "local governments shall not allow residential development of a scale and location that will cause significant ecological impacts to the ecological functions performed by vegetation and PFC for T&E species." However, it is not established that in all circumstances, the uses mentioned in this comment will cause harm to shoreline ecological systems. Besides, endangered aquatic species are not found everywhere in the state, so a ban based on impact to endangered species would be inappropriate as a statewide minimum standard.

340(3)(k) Transportation and parking

This section must establish a policy of discouraging parking facilities and parking in shoreline areas even to support a preferred use.

Parking is a necessary aspect of any land use today in most situations. It would be unreasonable not to allow parking associated with preferred shoreline uses.

340(3)(k)

This section must also establish a policy of keeping new roads or road expansions out of wetlands.

Ecology believes the provision of section 173-26-220(2)(i) adequately address this issue.

340(3)(k)

Path B allows for decreased protection of shoreline areas: Both Path A and Path B transportation and parking provisions (WAC 173-26-240(3)(k) (page 72 and WAC 173-26-340(3)(k) (page 153)) place restrictions on these uses. In Path A, these restrictions apply within shoreline jurisdiction, whereas in Path B, they apply within one site potential tree height measured from the CMZ or within shoreline jurisdiction, whichever is less.

Ecology has revised the rule to address this comment. The rule now reads: "Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction ~~or one site potential tree height, whichever is less."~~

340(3)(k)

Bicycle and pedestrian facilities should be encouraged as an alternative to motor vehicle access in near-shore areas and should be subject to reduced setbacks, rather than treated strictly as transportation or recreation development (they are both). Unpaved paths should not be subject to setbacks generally, but should be located and conditioned to mitigate potential impacts. Roads and parking areas should generally be located well back from the shore, beyond the buffer areas and setbacks normally applied to the primary development they serve.

Local governments will be able to determine appropriate setbacks for bike and pedestrian facilities when preparing local SMPs.

340(3)(k)

[second paragraph] "Transportation plans and projects shall be consistent ... and environmental protection provisions. Master program policies shall be consistent with established transportation plans." "... Plan, locate, and design proposed transportation and parking facilities .... Existing transportation facilities shall be allowed to be operated and maintained in all shoreline environments as a use allowed outright."

The provisions of GMA require internal consistency, including between the transportation element and the SMP.

All shoreline development must be consistent with the SMA.

340(3)(l) Utilities

Amend as follows: "No Hazardous Liquid or Natural Gas Pipelines may be located in a shoreline area without an independent analysis to demonstrate a public need for such a project. The analysis shall include public review and comment. No Hazardous Liquid or Natural Gas Pipeline may be located in any critical area within a shoreline of the state. Existing Hazardous Liquid or Natural Gas Pipelines located within shoreline areas shall provide copies of inspection results, construction data, locations and any notices of violations and penalties to local governments through which their pipeline passes. Any existing pipelines that cross critical areas shall install best available technology leak detection."

The development of underwater pipelines and cables on tidelands cause only minor and temporary impacts to the ecosystem. These impacts are mitigated through restoration requirements, in fact most often enhancement of ecologically degraded areas are effected through these projects. Once construction and restoration are complete there are no long-term effects on the environment. Therefore, it is inappropriate to discourage this type of activity, and this reference should be eliminated.

Ecology amended the rule to clarify that the standard for development of pipelines is to discourage facilities that cause significant impacts. The rule reads: "Development of ~~underwater~~ pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance or that cause significant ecological impacts shall be discouraged. When permitted, those facilities shall include adequate provisions to ~~ensure~~ protect against significant ecological impacts."

340(3)(l)

There should be a discussion within this section that addresses overhead utility needs to conduct integrated vegetation management. Suggestion - The following language should be included: "Routine and emergency vegetation management as part of utility corridor maintenance shall be allowed, providing adequate and appropriate vegetation replacement actions occur concurrently these activities."

While it may be that the local SMP will require a somewhat different approach to shoreline vegetation management by utility companies, it is not intended that measures necessary to maintain existing facilities or for public safety would be eliminated. Something like the suggested language may be appropriate in a local SMP if the local government so chooses. The intent of the guidelines is to set broad parameters that allow local government to develop a specific approach to accomplishing the objective. The reference to pipelines and cables in the tidelands is not intended to discourage necessary utility crossings of shorelines but of using the intertidal area along the shoreline as a substitute for an upland location. These types of facilities are sometimes necessary but have long term impacts to the beach through alteration of the vegetation and substrate and the periodic need for access, replacement or maintenance in addition to the short term impacts associated with installation.

340(3)(l)

Overhead utilities should be discouraged where practical.

In some circumstances, overhead lines may have less impact than underground.

340(3)(l)

The Sierra Club strongly supports the policy that transmission facilities, particularly pipelines "shall be located outside of the shoreline area where feasible." In addition, local governments must be required to incorporate this policy into their master programs.

Comment noted.

350 Shorelines of state-wide significance

This is a new section added to the WAC. Ecology applies the SSWS to lands without justification and without conferring with the property owners.

Every section not in the current version of 173-26 is technically a new section. Shorelines of state wide significance (SSWS) were created and designated by the legislature in 1971. SSWS criteria can be amended solely by the legislature. The italicized text in section 350 of these guidelines identifies quotations from the codified 1971 law, RCW 90.58. The specific criteria are set forth in RCW 90.58.030(2)(e). The rivers and water bodies meeting those criteria are listed in WAC 173-18 and WAC 173-20.

350

Optimum implementation involves special emphasis on state-wide objectives, resolving of all questions of effective management in favor of ecological systems and public trust interests. It also involves consultation with state agencies. The qualitative and public trust importance of the shorelines of statewide significance needs to be expanded and emphasized in these guidelines.

Ecological systems and public trust are not the sole subjects of the SMA so should not be so limited. The provisions are adequate to assure the issues of SSWS are properly addressed.

350(3)(a)

Local governments must do more than merely consult. Local governments must be required to respond in writing to substantive comments regarding the state-wide interest in shorelines of state-wide significance. In addition, this section must establish a State-wide interest in preserving Washington's islands as recognized critical areas that deserve optimum implementation.

Requirements for local government consultation and response to comments are contained in WAC 173-26-100, 110, & 120.

350(3)(b)

Regarding Preserving resources for future generations, sand and gravel deposits located onshore are a non-renewable resource. Therefore, sand and gravel mining should be prohibited in these areas and especially on Washington islands (except for on-island use). Sand and gravel mining within streams causes adverse environmental impacts and should also be prohibited, notwithstanding the fact that these sources of sand and gravel may be replenished over time.

Comment noted.

350(3)(c)

Domestic water supply should be recognized as a priority use of shorelines in order to better serve clean water objectives.

The subject is fully addressed by the Clean Water Act and Safe Drinking Water Act, and the provisions of law and regulations implementing same for Washington State.

350(3)(d)

Regarding Resources of State-wide importance, please delete the term "water-oriented" from this section and use the term "water-dependent".

The policy and provisions of the SMA clearly include allowance for uses that do not fit the definition of water-dependent.

360 Ocean management

We request that this section be revised to delete references to off-shore development, particularly off-shore drilling that has recently been prohibited by the Washington State Legislature.

The moratorium on off-shore drilling for oil is contained in state law and clearly overrides the provisions of the guidelines related to ocean resources. The Ocean Resources section was written relatively recently, is adequate for its purpose and the authority it is based on, and thereby was considered to not need amending. It is included solely for the purpose of re-adoption into the proper location in the regulations.